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In The
Supreme Court of the United States
October Term, 1983

JAMES REDDING, et al.,
Petitioners,

vs.

JAMES FAIRMAN, et al.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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QUESTIONS PRESENTED

1. In a trial under 42 U.S.C. § 1983, should defendant prison officials be permitted to introduce evidence outside the administrative disciplinary record to support their claim of a justified deprivation of procedural due process?

2. Does procedural due process of law prohibit a prison official from serving as a member of an Adjustment Committee for an inmate's disciplinary hearing, where the official is a named defendant in a pending money damages lawsuit brought by the inmate?

PARTIES TO THE PROCEEDING

The petitioners are James Redding, Jeffrey Armstrong, Jamal Ali Akbar, a/k/a James I. Benson, and Melvin Nalls.

Respondents are James Fairman, Paul Hosier, Diane Marion, Ferd Klaren, R. K. Hanson, Mary Catherine Noonan, and Andres Martinez.

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Petitioners respectfully pray that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit entered in this proceeding on September 13, 1983.

OPINION BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit is reported at 717 F. 2d 1105 (1983), and a copy is included in the Appendix.

JURISDICTION

Jurisdiction in this cause is premised upon 28 U.S.C. § 1254(1) for review by certiorari of the judgment and opinion of the United States Court of Appeals for the Seventh Circuit. A written opinion was issued by that court on September 13, 1983.

The record in this cause was lodged with the Clerk of the United States District Court for the Central District of Illinois, Danville, Illinois, on November 4, 1983, with the return of the mandate to that court. Although the mandate has issued, the United States Supreme Court has jurisdiction to review the decision of the United States Court of Appeals regardless of the status of the mandate. *Carr v. Zaja*, 283 U. S. 52, 53 (1931); *Aetna Casualty Co. v. Flowers*, 330 U. S. 464, 468 (1947).

STATEMENT OF THE CASE

The petitioners, all prison inmates, originally filed separate *pro se* cases pursuant to the 42 U.S.C. § 1983 and 28 U.S.C. § 1343 in the United States District Court for

the Central District of Illinois.[1] All of the causes presented common issues of law, alleging due process violations in the procedures utilized by the defendants, all Illinois Department of Corrections staff, during Adjustment Committee disciplinary hearings for prisoners. The trial court consolidated the cases and appointed counsel for the plaintiffs. An amended complaint was filed, naming eighteen individual defendants involved in the Adjustment Committee process, either as members of the committee or in reviewing the committee decisions.

After discovery, both sides filed motions for summary judgment, and the district court granted plaintiffs' motion in part. The court held that each of the disciplinary hearings at issue were constitutionally defective because of inadequate summaries by the committee. The court additionally ruled that three plaintiffs were denied constitutional rights to a neutral and detached decisionmaker because certain defendants, who were also defendants in unrelated lawsuits filed by the plaintiffs, did not disqualify themselves from participating in the disciplinary hearing.

In December of 1981, a jury tried the remaining issues of whether the defendants acted in good faith, whether certain plaintiffs were improperly denied their right to call witnesses at the disciplinary hearings, and the extent of actual injury to the plaintiffs.

A total of $6,020 in compensatory damages and $400 punitive damages were awarded by the jury, distributed

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[1]There were seven plaintiffs in the lower court litigation, but plaintiff Woodruff's cause was involuntarily dismissed prior to trial. Review is only sought on behalf of the four petitioners named herein.

among four plaintiffs. The district court awarded nominal damages to the two remaining plaintiffs, and also awarded attorneys fees and costs to plaintiffs' attorney.

An appeal was filed by the defendants on the merits and on the attorneys fees award, and plaintiffs cross-appealed.

The Seventh Circuit Court of Appeals affirmed in part, reversed in part, and remanded the cause for further consideration. The court held that the trial court's ruling on the inadequacy of the Adjustment Committee summaries was proper in 16 of the 18 hearings involved. The lower court ruling relating to the plaintiffs' limited right to call witnesses was also affirmed. The trial court's finding relating to a neutral and detached decisionmaker was reversed and remanded for analysis by the district court of the circumstances surrounding the unrelated lawsuit and determination of whether disqualification was required. The court held that the trial court improperly restricted the defendants' evidence to the administrative record, and reversed and remanded the damage issues. The court also affirmed the lower court's award of attorneys fees and the denial of *pro se* fees.

REASONS FOR GRANTING THE WRIT

I.

In A Civil Rights Action Under 42 U.S.C. § 1983 Concerning Prison Disciplinary Proceedings, Where Prison Officials Contend Their Deprivation Of An Inmate's Due Process Rights Were Justified, Support For That Claim Must Be Limited To The Administrative Record.

These consolidated civil rights cases brought in the context of prison disciplinary proceedings provide this Court with a significant opportunity to further clarify the damages aspect of relief to be afforded under 42 U. S. C. § 1983. In the recent past, this Court has held that governmental units are "persons", for purposes of the Civil Rights Act, *Monell v. Department of Social Services of the City of New York*, 436 U. S. 658 (1978); that a municipality has no good faith immunity against money damages in the civil rights context, *Owen v. City of Independence, Mo.*, 445 U. S. 622 (1980); that punitive damages are not available against a municipality in a civil rights suit, *City of Newport v. Fact Concerts, Inc.*, 453 U. S. 247 (1981); and that a prison guard can have punitive damages assessed against him in a civil rights action, *Smith v. Wade*, — U. S. —, 103 S. Ct. 1625 (1983). In considering the damage issues, this Court has emphasized:

> A damages remedy against the offending party is a vital component of any scheme for vindicating cherished constitutional guarantees, and the importance of assuring its efficacy is only accentuated when the wrongdoer is the institution that has been established to protect the very rights it has transgressed.
>
> *Owen v. City of Independence, Mo.*, 445 U. S. at 651.

As a unique species of tort litigation, however, this Court has recognized that actions brought pursuant to § 1983 must carefully focus upon the damages issue to allow recovery of damages only if they directly flow from the asserted procedural due process violations. *Carey v. Piphus*, 435 U. S. 247 (1978). In short, a justified deprivation of procedural due process would support the award of only nominal damages, and in such a situation, the re-

covery of substantial non-punitive damages could amount to a windfall to a prevailing civil rights' plaintiff. The issue left open by *Carey*, and presented by the petitioners in the present case, concerns where the trier of fact may turn, as its source of admissible evidence, to determine the issue of justification.

In its ruling below, the Seventh Circuit Court of Appeals held that "implicit" in the ruling of this Court in *Carey v. Piphus* was the premise that evidence beyond the administrative record, when proffered by these prison officials, must be considered on the damage issue. (717 F. 2d at 1118). Accordingly, the court rejected petitioners' contention and the trial court's holding that evidence beyond the administrative record would serve only to provide an opportunity for post hoc rationalization and would, therefore, undermine the interests that prison inmates have in disciplinary procedural due process. Because of the great likelihood of the recurrence of this evidentiary issue in civil rights actions seeking compensatory and punitive damages, this Court should grant certiorari to provide clarification to the lower courts on this important issue. *Smith v. Wade*, — U. S. —, 103 S. Ct. 1625, 1628 (1983).

The context of the present cases presents the damages issue under circumstances where the constitutional deprivations are a given, in that the Adjustment Committee summaries were found to be constitutionally inadequate under *Wolff v. McDonnell*, 418 U. S. 539 (1974), on plaintiffs' motion for summary judgment. Plaintiffs then proved the great disparity of living conditions and loss of privileges as a result of their movement from general

population to punitive segregation as a result of the actions taken by the prison officials in their capacity as Adjustment Committee members and as Warden. The defendants sought to adduce evidence that had not been presented to that Adjustment Committee and was not within the administrative record to prove the defendants guilty of the rules infractions charged, with the accompanying argument that an award of damages to the plaintiffs would be a windfall.

The trial court rejected the proffered evidence, and the jury determined the justification issue on the basis of the administrative records in each plaintiff's case. The jury awarded compensatory damages to petitioners Redding, Akbar, Nalls and Armstrong, but only nominal damages to Paul Tedder and Donald Jones, who were also plaintiffs below.

The landmark case of *Wolff v. McDonnell* unequivocably established the need for procedural due process protection in the prison discipline system. One of the foremost principles established by this Court in *Wolff* was the establishment of a procedural due process requirement that there be a written statement of evidence relied on and reasons for the disciplinary action; in short, the preservation of an administrative record in the prison disciplinary context. This Court described the purpose behind such a requirement:

> Written records of proceedings will thus protect the inmate against collateral consequences based on a misunderstanding of the nature of the original proceeding. Further, as to the disciplinary action itself, the provision for a written record helps to insure that administrators, faced with possible scrutiny by state offi-

> cials and the public, and perhaps even the courts, where fundamental constitutional rights may have been abridged, will act fairly. Without written records, the inmate will be at a severe disadvantage in propounding his own cause to or defending himself from others.
>
> *Wolff v. McDonnell,* 418 U. S. at 565.

Certainly, in addressing the damages issue where prison officials contend that their deprivation of an inmate's due process rights was justified, a court must take into account the nature of the interest the due process right seeks to protect. *Carey v. Piphus,* 435 U. S. at 259.

Once the Adjustment Committee finds an inmate guilty of a rule infraction, and permits his continued incarceration in punitive segregation, the consequences of a procedural due process violation are in place. As a practical matter, a civil rights action under 42 U. S. C. § 1983 will not undo the harm suffered by the inmate as a result of the change in his living conditions. The prison officials are, of course, in control of the processes by which the administrative record is made, and if those officials fail to adduce the necessary factual support for the decision they have reached, and further fail to make a proper administrative record under *Wolff v. McDonnell,* the damage aspects of their improper constitutional conduct is readily foreseeable. Thus, it imposes no hardship on the prison officials to stand or fall on the administrative record, as opposed to a later attempt to prove the inmate's guilt in federal district court. In fact, the ruling of the Seventh Circuit Court of Appeals provides encouragement to prison officials to take shortcuts at the administrative hearing stage, feeling safe in the knowledge that evidence

outside the administrative record can be marshaled and presented in district court in the event the inmate presents a civil rights claim.

If the ruling below is permitted to stand, the civil rights plaintiffs in prison disciplinary cases will certainly adduce evidence, also outside the administrative record, to refute assertions by prison officials. The function of the federal district court then, in such civil rights actions, is enlarged beyond a focus upon constitutional deprivations and resultant damages based on the administrative record, to one where the federal district judge must preside over a trial *de novo* on the issue of the inmate's guilt or innocence of the rule infraction. In effect, the federal district court becomes another Adjustment Committee. If determination of the issue of justification is limited to review of the administrative record, however, the district court's role to focus upon the procedural due process interests presented by punitive segregation is correctly preserved.

Not surprisingly, the holding of the Seventh Circuit Court of Appeals has impact far beyond the parameters of the prison disciplinary due process case. Any civil rights action presenting a procedural due process question will present the spectre of the federal district court going beyond the administrative record to try *de novo* the very issue that the administrative body decided adversely to the civil rights plaintiff. A grant of certiorari can provide guidance to the lower courts regarding the issue of justification and source of proof, and the attendant recovery of damages in a procedural due process case.

II.

A Prison Official Who Is A Named Defendant In An Unrelated Pending Civil Rights Action Seeking Money Damages Is Not An Impartial Decisionmaker, And Should Not Be Permitted To Serve On A Prison Adjustment Committee Under This Court's Holding In Wolff v. McDonnell, 418 U. S. 539 (1974).

In the cases of petitioners Akbar and Redding, the district court found that it was a violation of their procedural due process right to a neutral and detached decisionmaker to have sitting on their disciplinary Adjustment Committee a person who was a named defendant in a pending unrelated civil rights lawsuit seeking money damages. While this Court recognized that inmates in the prison disciplinary context have the right to an impartial decisionmaker, in *Wolff v. McDonnell*, 418 U. S. 539 (1974), the limited holding was that prison officials should not be prohibited from having disciplinary review functions. An Adjustment Committee so constituted did not present a threat of arbitrariness to amount to a violation of due process of law. 418 U. S. at 571, 572. In his concurring opinion, Justice Marshall expressed his view that "due process is satisfied as long as no member of the disciplinary board has been involved in the investigation or prosecution of the particular case, or has had any other form of personal involvement in the case." 418 U. S. at 592.

The Seventh Circuit Court of Appeals, relying on this concurring language, felt that the trial court's ruling was too broad, and that a sharper focus of the issue was needed to determine the extent, if any, of personal bias that might exist as a result of the adverse status of the inmate

and committee member in the unrelated civil rights action. Accordingly, the court remanded the issue to the district court for reconsideration.

A fair and impartial decisionmaker has long been held to be a fundamental component of due process. *In re Murchison*, 349 U.S. 133 (1955); *Goldberg v. Kelly*, 397 U.S. 254 (1970); *Morrissey v. Brewer*, 408 U.S. 471 (1972); *Withrow v. Larkin*, 421 U.S. 35 (1975). Again, the issue of what constitutes a violation of due process on the basis of a fair and impartial decisionmaker has been and will be recurring in the prison disciplinary context. See, *e.g., Edwards v. White*, 501 F. Supp. 8 (M.D. Pa. 1979), aff'd 633 F. 2d 209 (3rd Cir. 1980); *Clutchette v. Procunier*, 497 F. 2d 809 (9th Cir. 1974). This question, left open by this Court's decision in *Wolff*, is an important one that should be addressed by a grant of certiorari in this case.

The petitioners contend that common sense dictates that one would suspect that a person who has been sued for money damages carries an inherent bias against the plaintiff in that lawsuit. While due process under *Wolff* would not require that the Adjustment Committee be composed of persons unconnected with the prison, certainly a basic concern for fairness would demand that the disciplinary tribunal not be composed of members that stand in an adversary relationship with the prisoner who is the subject of the disciplinary proceeding. The litigation context is a "personal relationship" for purposes of determining bias under Justice Marshall's concurrence in *Wolff*.

There cannot be an acceptable method to confirm with any degree of certainty that an Adjustment Committee's

decision was not the result of improper input from the committee member who has, at the least, the appearance of partiality against the inmate. Under these circumstances, the very existence of the "appearance of impropriety" raises the issue of arbitrary and capricious decision-making, wholly at odds with the interests sought to be protected by procedural due process in the context of prison discipline. Due process can, however, be satisfied where the Adjustment Committee consists of no members that the plaintiff has sued for money damages. Because the potential for arbitrary punitive segregation is at issue, significant due process interests are at stake. On the other hand, administrative segregation would call into play due process interests of less significance. *Hewitt v. Helms*, — U. S. —, 103 S. Ct. 864 (1983).

The answer offered by the Seventh Circuit Court of Appeals only complicates the matter by requiring a case by case analysis on the issue of impartiality. That court rejected any *per se* rule. Just as a prison official connected with a disciplinary case before an Adjustment Committee by being an investigator or a witness, could be deemed *per se* not impartial, the civil rights defendant who faces the prospect of a money damage judgment against him can be deemed to be *per se* not impartial, as the trial court correctly recognized.

The past prison discipline rulings of this Court, namely, *Wolff v. McDonnell*, and its progeny, do not address this important question. When both Redding and Akbar objected to the presence of Captain Hosier on the Adjustment Committee, he too was in need of an answer. Review by this Court of petitioners Redding's and Akbar's cases will serve an important function in providing guid-

ance to the lower federal courts, prison officials, and inmates in the heavily litigated area of prison discipline civil rights cases.

CONCLUSION

These prison discipline civil rights cases present issues of recurring significance and importance. The issue of damages for deprivation of procedural due process and the right to a fair and impartial decisionmaker are vital ones that should receive examination by this Court. Certainly the combination of these issues warrants this Court's attention and a grant of certiorari to resolve these important questions.

Respectfully submitted,

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December, 1983

APPENDIX

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Nos. 82-1472, 82-1541, 82-1892, and 82-1955

JAMES REDDING, JAMAL ALI AKBAR a/k/a JAMES I. BENSON, DONALD WOODRUFF, DONALD JONES, PAUL WILLIAM TEDDER, MELVIN NALLS, and JEFFREY ARMSTRONG,

Plaintiffs-Appellees, Cross-Appellants,

v.

JAMES FAIRMAN, CAPT. WHEAT HOSIER, CAPT. SHEHORN, CAPT. POE, CAPT. WENZELMAN, LT. MARTINEZ, LT. FOSTER, LT. DELOS SANTOS, MARY CATHERINE NOONAN, KENT MILLS, FERD KLAREN, LARRY LIVINGSTON, R. K. HANSON, TERRY WILLIAMS, HUGH JOHNSON, DIANE MARION, JOHN KAMMERMAN, and FIVE UNKNOWN MEMBERS OF THE INSTITUTIONAL ADJUSTMENT COMMITTEE,

Defendants-Appellants, Cross-Appellees.

Appeal from the United States District Court for the Central District of Illinois, Danville Division.
Nos. 79 C 2217, 79 C 2304, 79 C 2310, 79 C 2313, 80 C 2013, 80 C 2108, 80 C 2132—*Harold A. Baker, Judge.*

ARGUED MAY 12, 1983—DECIDED SEPTEMBER 13, 1983

Before BAUER, WOOD, *Circuit Judges,* and ROSENN, *Senior Circuit Judge.**

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* The Honorable Max Rosenn, Senior Judge of the United States Court of Appeals for the Third Circuit, is sitting by designation.

BAUER, *Circuit Judge*. The eighteen defendants, all staff of the Illinois Department of Corrections, appeal from adverse judgments on jury verdicts and an award of attorney's fees and costs entered in consolidated cases filed under 42 U. S. C. § 1983 (1979) and 28 U. S. C. § 1343 (1979). The plaintiffs, all prison inmates, cross-appeal on several issues.

Originally, seven prisoners filed eight separate *pro se* cases challenging the constitutionality of procedures used at the Pontiac Correctional Center to conduct disciplinary hearings for prisoners charged with major misconduct. The district court consolidated the cases and appointed the plaintiffs' counsel who filed an amended complaint.[1]

After discovery, both sides filed motions for summary judgment. The district court granted the plaintiffs' motion in part, concluding that each of the eighteen prison Adjustment Committee hearings at issue was constitutionally defective because Committee summaries were inadequate. Additionally, the court ruled that three plaintiffs were denied their procedural rights because certain defendants did not disqualify themselves from participating in the hearings.

In December 1981, a jury tried the remaining issues, including (1) whether two plaintiffs were improperly denied their right to call witnesses at their hearings, (2) whether Adjustment Committee members acted in good faith, and (3) the extent of any actual injuries to the plaintiffs. The jury awarded a total of $6,020 compensa-

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[1] Also named as defendants were five unknown members of the Pontiac Correctional Center Adjustment Committee.

tory damages and $400 punitive damages; these were distributed as explained below. The district court awarded nominal damages to two plaintiffs who received no award from the jury. The court also awarded the plaintiffs $14,995 attorney's fees and $1,437.36 costs.

Because the district court applied incorrect constitutional standards to certain issues before it, we affirm in part, reverse in part, and remand for further consideration.

I. Facts

A. Administrative Regulation 804

Administrative Regulation (A. R.) 804 defines major prisoner misconduct and establishes procedures and punishments for use when a prisoner is ticketed with a disciplinary violation. Three provisions of A. R. 804 interest us here. The first, section (II) (G) - (4), states: "Under no circumstances may any person who initiated the allegations which serve as the basis for the Resident Disciplinary Report, or who investigated those allegations, or who witnessed the incident sit on the Adjustment Committee hearing that Resident Disciplinary Report." The regulation contains no other provision regarding impartiality of Committee members. The second provision, section (II) (G) - (9), states in part: "Witnesses requested by residents may be excluded [from the hearing] if their testimony would be irrelevant, cumulative, jeopardize the safety of an institution, or disrupt the security of the facility. If any witness is excluded, a written reason will be recorded." The third provision relevant to this case, section (II) (G) - (11), states:

> The Adjustment Committee shall decide whether or not the resident committed the chargeable offense based upon the evidence it admits at the hearing. As previously stated, the Committee must be reasonably satisfied that the resident committed the offense for him/her to be found guilty of same. All evidence submitted, including all oral and written statements, shall be summarized in the written record prepared by the Committee. *The Committee members shall specifically refer to the evidence which convinced them to decide the resident did or did not commit the chargeable offense. A short explanation shall be stated of why information purporting to exonerate the resident was discounted—if the resident was found in violation. It will not be sufficient for the Committee's decision to simply adopt and copy the exact wording of the Resident Disciplinary Report.* In addition, the disposition of the hearing, the disciplinary action taken, the duration of a segregation placement, as well as the reasons for the disciplinary action and the length of the segregation placement shall be specified in the written record. The written record must be signed by all the members of the Adjustment Committee. (Emphasis added.)

Under A. R. 804, the Adjustment Committee consists of three members appointed by the Chief Administrative Officer of the prison. The Committee chairperson must have the rank of Captain or above. At the hearing, one Committee member records the proceedings, including the inmate's testimony, the disposition, evidence relied on, and the basis for decision. These observations are recorded on a pre-printed form titled Adjustment Committee Summary.

B. Plaintiff Redding

James Redding received a resident disciplinary report on November 19, 1979, charging him, among other things,

with forging a name on a medical pass in violation of A. R. 804 §§ (II) (A) - (1), (13) & (14). On November 21, Redding appeared before the Adjustment Committee, then consisting of Defendants Hosier, Marion, and Klaren. Redding requested that Hosier disqualify himself, because Redding had an unrelated civil rights suit for damages pending against Hosier. Hosier refused the request.

The Committee found Redding guilty. In the section of the Adjustment Committee Summary marked "Record of Proceedings," the Committee wrote: "Resident states the officer is lying, that is his signature. And this document is not a forgery." In the section marked "Basis for Decision/Evidence Relied Upon," the Committee wrote: "All evidence presented has convinced the committee the resident is guilty of forging a pass or altering a pass, giving false information to a [sic] employee and disobeying a prison rule." Redding received fifteen days in segregation and a thirty-day demotion to C-grade status, entailing loss of certain privileges accorded to A-grade inmates. The Committee's finding of guilt and the punishment imposed were approved by Defendant Fairman, Pontiac's warden, but six months later the entire incident was expunged from Redding's record because the charging officer admitted that the signature was not a forgery.

Redding testified in a deposition that he submitted an advance written request to call three witnesses at the Committee hearing.[2] The Committee denied his requests.

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[2] Every disciplinary report contains the following paragraph:

Please be advised that you have the right to appear before the Adjustment Committee and contest this rule

(Continued on next page)

The Adjustment Committee Summary did not explain two of the three denials.

At trial, Redding testified that he spent fifteen days in segregation as a result of the Committee decision. The jury awarded Redding $20 compensatory damages for denial of Redding's request to call witnesses, denial of an impartial decisionmaker, and inadequate summaries of the evidence and reasons for the Committee decision. The jury awarded Redding $200 punitive damages against Defendant Hosier for refusal to disqualify himself from the Committee.

C. Plaintiff Akbar

A resident disciplinary report dated January 10, 1980, charged Jamal Ali Akbar with possession of gang-related materials—specifically letters or "kites"—in violation of

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(Continued from previous page)

violation charge by presenting a written or oral statement or explanation of your actions. You may present to the Committee relevant physical exhibits such as records or documents; you have a right to ask that witnesses be interviewed, and if necessary in the Committee's judgment, you may be called to testify during your hearing. In addition, you may ask the Committee to question the witness along lines you suggest. You must indicate in advance of the hearing the witnesses you wish to have interviewed by filling out the appropriate space on this form, tearing it off, and returning it to the Committee. If you are illiterate or seriously handicapped, you may have the assistance of a staff counselor to help you prepare a defense. You may request a reasonable extension of time to prepare for your hearing. If you are found guilty of a serious rule violation and are found to be a danger to the institutional community, you may be placed in segregation and/or deprived of your current grade and statutory good time credit.

A. R. 804 §§ (II) (A) - (1), (14) & (15). Akbar was immediately placed in segregation. He made no advance written request for witnesses.

Akbar appeared before the Adjustment Committee on January 13. Under "Record of Proceedings," the Committee wrote in part: "Resident states that he was unaware of having the gang-related materials in his possession. States he had just picked up some affidavits from Resident Withers and placed them in a legal folder." In the section "Basis for Decision/Evidence Relied Upon," the Committee wrote: "Based on resident's testimony and evidence presented, the committee is convinced that resident is guilty of carrying kites and other unauthorized written material into the segregation unit and violated the trust in his law clerk position."

Defendant Hosier, then also a defendant in a pending civil rights suit for damages filed by Akbar, was chairman of the Committee. Although Akbar objected that he could not receive a fair hearing before Hosier, Hosier remained on the Committee.

The Committee imposed a disciplinary job transfer on Akbar, but reports of the violations were expunged from Akbar's record when another inmate verified Akbar's statement that the letters found in his possession were religious materials.

The jury awarded Akbar $3,500 compensatory damages for denial of an impartial decisionmaker and inadequate summaries of the evidence and reasons for the Committee decision. The jury also awarded Akbar $200 punitive damages against Defendant Hosier for refusing to disqualify himself from the Committee.

D. Plaintiff Nalls

Melvin Nalls' resident disciplinary report, received March 14, 1980, accused Nalls of assaulting another inmate in violation of A. R. 804 §§ (II) (A) - (1), (5), (6), (8), (10) & (28).

The Adjustment Committee, in a hearing held on March 16, found Nalls guilty. He was sentenced to one year in segregation, one year loss of good conduct time credit, a one-year demotion to C-grade status, and loss of audio-visual privileges. In the section "Record of Proceedings," the Committee wrote: "resident states he just got out of segregation 2 hours before incident occurred. He was not in gymnasium. Miranda warning was read prior to report having been read." In the section "Basis for Decision/Evidence Relied Upon," the Committee wrote:

> Based on all evidence available, including the residents statements and the report from D. Polizzi indicating resident Nalls was observed in the shower room area at the gym and fact that resident Jones A15622 was assaulted, the Adjustment Committee is convinced that resident Nalls is guilty of assaulting another resident, creating a disturbance, unauthorized movement.

At trial, the jury awarded Nalls $1,000 compensatory damages for inadequate summaries of the evidence and reasons for the Committee decision.

E. Plaintiff Armstrong

On February 9, 1980, Jeffrey Armstrong was charged in a resident disciplinary report with cursing and grabbing a guard in violation of A. R. 804 §§ (II) (A) - (1), (2), (4), (5), & (6).

The Adjustment Committee found Armstrong guilty and sentenced him to thirty days in segregation and a six-month demotion to C-grade status. The Committee, in the section "Basis for Decision/Evidence Relied Upon," wrote: "Based on all available evidence, including the residents' statements, the Adjustment Committee is convinced the resident is guilty of disregarding a prison rule, disrespect, cursing, and assaulting an employee by grabbing the employees arm."

Armstrong testified that his proper requests for witnesses were denied. In the section "Witnesses Called," the Committee wrote: "Witnesses were requested by the resident, however, based on the resident's testimony, the Adjustment Committee is of the opinion the witnesses could offer no pertinent information or testimony to the situation."

The jury awarded Armstrong $1,000 compensatory damages for denial of Armstrong's request to call witnesses and inadequate summaries of the evidence and reasons for the Committee decision.

F. Plaintiff Tedder

Paul William Tedder complains about the procedures used at twelve separate Adjustment Committee hearings conducted during 1979 and 1980. Defendants Hosier, Shehorn, Santos, and Wheat sat as members of the Adjustment Committee during some of those hearings, and all refused to disqualify themselves despite Tedder's protests that they were prejudiced against him because they were defendants in pending lawsuits Tedder had filed.

Tedder did not make advance written requests to call witnesses. The Committee denied his oral requests made during some of the hearings. The Adjustment Committee found Tedder guilty at all twelve hearings:

(1) August 4, 1979—For violating A. R. 804 § (II) (A) - (4) (using improper language), punishment of seven days in segregation was reduced by the warden to a verbal reprimand.

(2) August 10, 1979—For violating A. R. 804 §§ (II) (A) - (1) & (3) (refusing properly authorized work or housing assignments), a sentence of fifteen days in segregation was imposed.

(3) September 30, 1979—For violating A. R. 804 §§ (II) (A) - (1) & (3), a sentence of fifteen days in segregation and fifteen days of C-grade status was imposed.

(4) November 3, 1979—For violating A. R. 804 § (II) (A) - (1), a sentence of fifteen days in segregation, fifteen days of C-grade status, and loss of audio-visual privileges was imposed.

(5) November 18, 1979—For violating A. R. 804 §§ (II) (A) - (1) & (3), the same sentence Tedder received on November 3 was imposed.

(6) February 2, 1980—For violating A. R. 804 §§ (II) (A) - (1), (2) (being disrespectful to an employee) & (4), a sentence of fifteen days of C-grade status was imposed.

(7) February 4, 1980—For violating A. R. 804 §§ (II) (A) - (1) & (3), the same sentence Tedder received on November 3 was imposed.

(8) February 17, 1980—For violating A. R. 804 §§ (II) (A) - (1) & (3), a sentence of fifteen days in segregation, thirty days of C-grade status, and loss of audio-visual privileges was imposed.

(9) March 2, 1980—For violating A. R. 804 §§ (II) (A) - (1) & (3), the same sentence Tedder received on February 17 was imposed.

(10) March 16, 1980—For violating A. R. 804 §§ (II) (A) - (4) & (8) (inciting a riot), a sentence of fifteen days in segregation, thirty days of C-grade status, and loss of audio-visual privileges was recommended by the Committee. The warden reduced segregation time to seven days and approved the other punishments.

(11) March 23, 1980—For violating A. R. 804 §§ (II) (A) - (1) & (3), the same sentence Tedder received on November 3 was imposed.

(12) March 23, 1980—For violating A. R. 804 §§ (II) (A) - (1), (2) & (4), the same sentence Tedder received on February 17 was imposed.

In the sections "Basis for Decision/Evidence Relied Upon," the Committee wrote:

(1) August 4, 1979—"Based on all evidence available, the Adj. Comm. is convinced the resident made improper and threatening remarks to the captain."

(2) August 10, 1979—"Based on all availble [sic] information presented to this committee, and residents testimony the committee is convinced resident is guilty of refusing to leave segregation."

(3) September 30, 1979—"Based upon all available information this committee believes resident guilty."

(4) November 3, 1979—"Based upon the evidence presented by the officer's report the resident of [sic] found guilty of refusing a new housing assignment and has thereby violated an institutional rule."

(5) November 18, 1979—"Based on resident's testimony and all evidence presented, the committee is convinced that resident is guilty of refusing to leave segregation."

(6) February 2, 1980—"Based upon the evidence presented we find the resident guilty of cursing and not doing what he was told."

(7) February 4, 1980—"Residents testimony given and all evidence presented has convinced the committee the resident is guilty of refusing proper housing assignment, cursing a [sic] officer, and disobeying prison rules, and disobeying a direct order."

(8) February 17, 1980—"Based on all evidence available, the Adjustment Committee is convinced the resident is guilty of refusing proper housing."

(9) March 2, 1980—"Based on all evidence available, including the residents statements and the statement of the officer that Tedder did refuse to leave segregation, the Adj. Committee is convinced the resident is guilty of refusing proper housing, and disregarding a prison rule."

(10) March 16, 1980—"Based on all available evidence including the fact the reporting officer does identify resident Tedder as using vulgar and abusive language the Adjustment Committee is convinced the resident is guilty of using vulgar language and creating a disturbance."

(11) March 23, 1980—"Based on all evidence available including the statement of the reporting officer that the resident refused to leave segregation, the Adj. Comm. is convinced the resident is guilty of refusing proper housing."

(12) March 23, 1980—"Based on all evidence available, including the reporting employees statements that the resident did refer to the employee as 'you fuckers' and referred to Ms. Ruck as a 'bitch whore,' the Adj. Comm. is convinced the resident is guilty of disregarding a prison rule, disrespect, and using vulgar language."

The jury awarded Tedder no compensatory damages. The district court entered judgment in Tedder's favor for

$1 nominal damages for denial of impartial decisionmakers and inadequate summaries of the evidence and reasons for the Committee decisions.

G. Plaintiff Jones

Donald Jones received a resident disciplinary report on November 27, 1979, charging him with striking another inmate in violation of A. R. 804 §§ (II) (A) - (1), (2) & (5). On November 30, the Adjustment Committee found Jones guilty as charged and recommended six months in segregation, a six-month demotion to C-grade status, and six months loss of good conduct time credit as punishment. In the section "Basis for Decision/Evidence Relied Upon," the Committee wrote: "All evidence presented and residents testimony given has convinced the committee the resident is guilty of striking a [sic] employee and or (resident) disrespecting a prison rule and order not to fight." The warden reduced each punishment to ninety days.

The jury awarded Jones no compensatory damages. The district court entered judgment in Jones' favor for $1 nominal damages for inadequate summaries of the evidence and reasons for the Committee decision.

H. Plaintiff Woodruff

Donald Woodruff appeared before the Adjustment Committee on November 29, 1979, in response to a November 27 resident disciplinary report charging him with violating. A. R. 804 §§ (II) (A) - (1) & (4) by cursing and threatening a prison officer. The Committee found him

guilty and sentenced him to seven days in segregation, a thirty-day demotion to C-grade status, and loss of yard privileges for thirty days.

The basis for the Committee decision was stated as follows: "All evidence presented and residents testimony given has convinced the committee the resident is guilty of improper use of language, and disobeying a direct order."

Woodruff's claim was dismissed with prejudice by the district court before trial when he threatened to disrupt the proceedings, in part by refusing to wear clothes provided to him.

II. Due Process

The application and extent of due process requirements to prison administration has been explored in many appellate opinions since the United States Supreme Court's decision in *Wolff v. McDonnell*, 418 U.S. 539 (1974).[3] *See Bartholomew v. Watson*, 665 F. 2d 915 (9th Cir. 1982); *Langton v. Berman*, 667 F. 2d 231 (1st Cir. 1981); *Smith v. Rabalais*, 659 F. 2d 539 (5th Cir. 1981), *cert. denied*, 455 U.S. 992 (1982); *Jensen v. Satran*, 651 F. 2d 605 (8th Cir. 1981), *cert. denied*, 103 S. Ct. 1244 (1983); *Chavis v. Rowe*, 643 F. 2d 1281 (7th Cir.), *cert. denied sub nom., Boles v. Chavis*, 454 U.S. 907 (1981); *Hayes v. Thompson* (*Hayes II*), 637 F. 2d 483 (7th Cir. 1980); *Eugene v. Klecker*, 636 F. 2d 250 (8th Cir. 1980);

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[3] The *Wolff* Court ruled that a prisoner should receive advance notice of the charges against him, an opportunity to prepare and present a defense, and a written statement by the fact-finders as to the evidence relied on and reasons for the disciplinary action.

United States v. Warden, Stateville Correctional Center, 635 F. 2d 656 (7th Cir. 1980), *cert. denied*, 454 U. S. 843 (1981); *Bono v. Saxbe*, 620 F. 2d 609 (7th Cir. 1980); *Rhodes v. Robinson*, 612 F. 2d 766 (3d Cir. 1979); *Hayes v. Walker* (*Hayes I*), 555 F. 2d 625 (7th Cir.), *cert. denied*, 434 U. S. 959 (1977); *Aikens v. Lash*, 514 F. 2d 55 (7th Cir. 1975), *vacated*, 425 U. S. 947, *on remand*, 547 F. 2d 372 (1976).

Prisoners are not afforded all of the rights and privileges guaranteed to other citizens, but neither are they "wholly stripped of constitutional protections." *Wolff*, 418 U. S. at 555. Also, the rights they enjoy are flexible and subject to limitations when balanced against the extraordinary situations that sometimes arise in prisons. We must balance the need for efficient and secure prisons against the prisoners' right to be protected against unwarranted losses of liberty. *See Bono v. Saxbe*, 620 F. 2d at 618. We are keenly aware that prison officials have broad discretion to structure and operate a prison disciplinary system. "[A] court should [not] meddle in prison affairs unless legitimate constitutional issues are raised that require . . . intervention." *Bono v. Saxbe*, 620 F. 2d at 621 (Wood, J., concurring in part); *see also Smith v. Rabalais*, 659 F. 2d at 545.

In prison disciplinary proceedings, the need to protect prisoners' procedural rights comes clearly into focus. Very little stands between the prisoner and the loss of his privileges. The Adjustment Committee hearings at the Pontiac prison are so numerous as to be almost routine. On the one hand, this means that prison officials are experienced and well-equipped to handle the hearings;

on the other, the prison staff is burdened by a large number of hearings.

III. Adjustment Committee Procedures

A. Disqualification

The district court incorrectly ruled that the holdings in *Wolff v. McDonnell* and *Bono v. Saxbe* require disqualification of all Adjustment Committee members who are defendants in unrelated civil suits for damages brought by the inmate appearing before the Committee. Although the requirement of a "neutral and detached" decisionmaker must not be impaired, disqualification is not necessary in every case.

On the issue of what constitutes a neutral and detached decisionmaking body, the *Wolff* Court ruled, in part, that an adjustment committee consisting of the Associate Warden for Custody (as chairperson), the Correctional Industries Superintendent, and the Reception Center Director was sufficiently impartial to satisfy due process. The *Bono* court approved qualifications suggested by the district court to ensure fairness, that is, that the hearing officer should have a "[l]ack of former personal involvement in any disciplinary or adjustment matter with the inmate." *Bono v. Saxbe*, 462 F. Supp. 146, 149-50 (E. D. Ill. 1978) (appendix), *aff'd*, 620 F. 2d 609 (7th Cir. 1980). The district court in this case, in its order on summary judgment, construed *Wolff* and *Bono* to mean that disciplinary committee members "at least should not be defendants in pending lawsuits for damages instituted by the very persons over whom the committee sits in judgment."

The district court ruling unnecessarily extends *Wolff's* reach. A prisoners' rights lawsuit often includes several defendants, some of whom may not know the plaintiff. Moreover, if an Adjustment Committee member is a defendant in the unrelated action named in her or his administrative capacity for performing ministerial duties, then the Committee member may have little personal involvement in the case. Under these circumstances, the Committee member's ability to serve as a neutral and detached decisionmaker at a hearing involving the plaintiff-prisoner may not be impaired, and disqualification may not be necessary. From a practical standpoint, requiring each staff member who is the subject of a separate lawsuit to disqualify himself from sitting in judgment of that inmate would heavily tax the working capacity of the prison staff. Additionally, prisoners may file many lawsuits naming multiple defendants. If every named defendant in a prisoner's rights lawsuit must be disqualified from sitting on the Adjustment Committee, such a litigation strategy would vest too much control in a prisoner to determine the Committee make-up. For these reasons, the disqualification issue should be decided on a case-by-case basis.

The Third Circuit has ruled, following Justice Marshall's concurrence in *Wolff*, 418 U. S. at 592, that due process prohibits "only those officials who have a direct personal or otherwise substantial involvement, such as major participation in a judgmental or decision-making role, in the circumstances underlying the charge from sitting on the disciplinary body." *Rhodes v. Robinson*, 612 F. 2d at 773. Mandatory disqualification in this case would extend that position. Nevertheless, we believe that circumstances

other than those arising directly out of the disciplinary process may raise such doubts about the integrity of the hearing procedure and the impartiality of its participants so as to trigger due process considerations.

We reverse the ruling of the district court requiring disqualification of every Committee member who is a defendant in a suit filed by the inmate appearing before the Committee. Our decision affects Plaintiffs Redding, Akbar, and Tedder. The record does not reflect the nature of the plaintiffs' pending lawsuits against the Committee members. Thus, we remand this issue to the district court with direction to evaluate the circumstances involved in the lawsuits and determine whether disqualification is required. Among other considerations, the district court should determine the extent of the Committee members' personal involvement in those lawsuits. The purpose of this inquiry is to protect individuals against arbitrary action of government. *Wolff v. McDonnell*, 418 U. S. at 558.

B. Witnesses

Plaintiffs Redding, Akbar, Armstrong, Tedder, and Woodruff all claimed that their due process rights were denied when the Adjustment Committee refused their requests to call witnesses at the hearings. Plaintiffs Akbar, Woodruff, and Tedder, however, did not follow the required procedure for requesting witnesses. The administrative regulations require inmates to submit a request for witnesses desired in advance of the hearing. The district court approved that procedure, and did not allow those three claims to go to the jury. Those plaintiffs have not appealed that ruling. As a result, only the claims of Plaintiffs Redding and Armstrong are raised on appeal.

Plaintiffs Redding and Armstrong testified that they had properly requested witnesses. The administrative records in those cases support that testimony. The jury found that these plaintiffs were denied due process because their requests were denied without justification.

The right to call witnesses is basic to a fair hearing. *Wolff v. McDonnell*, 418 U. S. at 566; *Bartholomew v. Watson*, 665 F. 2d at 918. Nevertheless, prison officials have the discretion to refuse inmates' requests for witnesses to protect institutional safety or to keep the length of the hearing within reasonable limits. But in this case no witnesses were allowed to testify at either hearing, and there is no indication that the requests were unreasonable. Furthermore, the only reason the Adjustment Committee offered for denying Plaintiff Reddings' requests was that one of the three requested witnesses was off duty the day of the hearing. The Committee wrote on Plaintiff Armstrong's summary: "Witnesses were requested by the resident, however, based on the resident's testimony, the Adjustment Committee is of the opinion the witnesses could offer no pertinent information or testimony to the situation."

In *Hayes I*, 555 F. 2d at 630, this court recognized that the *Wolff* Court declined to require a formal statement of reasons when requests for witnesses are denied. We noted, however, that some support for denial of witnesses should appear in the administrative record; without such a record judicial review would be meaningless. *Id.; see also Hayes II*, 637 F. 2d at 486. The Adjustment Committee Summaries for Plaintiffs Redding and Armstrong do not enable us to determine whether the broad discretion of prison

officials was exercised arbitrarily. *See generally Langton v. Berman,* 667 F. 2d at 234 (allowing four of fifteen witnesses was not abuse of discretion). Accordingly, we must sustain the jury's determination that the denials of the requests for witnesses abridged those plaintiffs' due process rights.

C. Committee Summaries

The principal issue in this appeal concerns the adequacy of the Adjustment Committee Summaries. Administrative Regulation 804 requires that these summaries enunciate the basis for the Committee's decision and specify the evidence underlying the ruling. *See Aikens v. Lash,* 514 F. 2d at 60-61. This requirement is not to be taken lightly. The Supreme Court has written:

> [T]he actions taken at such proceedings may involve review by other bodies. They might furnish the basis of a decision by the Director of Corrections to transfer an inmate to another institution because he is considered "to be incorrigible by reason of frequent intentional breaches of discipline," . . . and are certainly likely to be considered by the state parole authorities in making parole decisions. Written records of proceedings will thus protect the inmate against collateral consequences based on a misunderstanding of the nature of the original proceeding. Further, as to the disciplinary action itself, the provision for a written record helps to insure that administrators, faced with possible scrutiny by state officials and the public, and perhaps even the courts, where fundamental constitutional rights may have been abridged, will act fairly. Without written records, the inmate will be at a severe disadvantage in propounding his own cause to or defending himself from others. It may be that there will be occasions when personal or institutional safety is so implicated that the statement may

> properly exclude certain items of evidence, but in that event the statement should indicate the fact of the omission. Otherwise, we perceive no conceivable rehabilitative objective or prospect of prison disruption that can flow from the requirement of these statements.

Wolff v. McDonnell, 418 U. S. at 565 (footnotes omitted).

In *Hayes I*, 555 F. 2d at 631-33 & n. 1, this court rejected as inadequate an adjustment committee summary which stated: "Based on our review of the violation report and the report by the special investigator it is our motion that we find Mr. Hayes guilty as charged. We find that Mr. Hayes is guilty of conspiracy to incite to riot and commit mutinous acts." The committee report to Inmate Hayes stated: "The Committee's decision is based on the violation report as written and upon the report by the special investigator which during your absence was made part of the record." *See United States v. Warden, Stateville Correctional Center*, 635 F. 2d at 659. The *Hayes I* court stated that the general finding, by merely incorporating the violation report and the special investigator's report, "does not ensure that prison officials will act fairly. Nor will this finding protect against subsequent collateral effects based on misunderstanding of the initial decision." *Hayes I*, 555 F. 2d at 633. In *Chavis v. Rowe*, 643 F. 2d at 1286-87, this court rejected as inadequate a summary which stated: "We recognize and consider the resident[']s statement[,] however [,] we accept the reporting officer[']s charges." The statement was deemed inadequate because "[i]t did not mention what evidence the reporting officer relied on, the investigatory report containing exculpatory evidence, or [an] earlier report. It gave no clear indication of why the reporting officer was to be believed rather

than [the inmate] or [the victim, whose testimony favored the inmate]." The court stated that the defendants, "in failing to provide Chavis with a written statement giving facts relied on and reasons for the conclusions reached, . . . violated Chavis' due process rights under *Wolff*, and also his right not to be found guilty except by an appropriate quantum of evidence." *Id.* at 1287.

We have looked long and hard at the eighteen summaries of the evidence before us. We are forced to conclude that none of them, standing alone, fulfills the essential functions stated in *Wolff*. Moreover, the summaries violate A. R. 804, which states that "[i]t will not be sufficient for the Committee's decision to simply adopt and copy the exact wording of the Resident Disciplinary Report," and violate the Due Process Clause, which requires the Committee to state not merely how it acts, but also why it acts in a particular manner. Many of the summaries are even less specific than the reports found constitutionally deficient in *Hayes I*. The phrases "based on all available evidence," or "all evidence presented" are conclusory; they do not disclose what evidence forms the bases of the Committee rulings. The Committee apparently gives credence to the resident disciplinary report in almost every case, but does not admit to doing so in its summaries. Also, no reasons are given for discounting the inmates' contradictory evidence.[4] *See Chavis v. Rowe*, 643 F. 2d at 1287; *see generally Kyle v. Hanberry*, 677 F. 2d 1386 (11th Cir. 1982) (administrative record must reflect how dis-

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[4] We note further that none of the eighteen summaries states the reasons underlying the nature and amount of punishment imposed. The punishments can be severe. A prisoner is better protected from arbitrary and unfair punishments when reasons for the amount of punishment are articulated.

ciplinary committee concluded that an unidentified informant was credible and reliable).

Evaluating the form summaries as a whole by combining the sections "Record of Proceedings" with the sections "Basis for Decision/Evidence Relied Upon" rescues two of the eighteen summaries from constitutional inadequacy. In the section "Record of Proceedings" for Plaintiff Jones, the Committee noted in part: "Resident states he struck resident due to he owed him money." In the section "Basis for Decision/Evidence Relied Upon," the Committee noted "residents testimony given." Because there was no conflict between the resident disciplinary report and testimony at the Committee hearing, it can be assumed that the Committee relied on Plaintiff Jones' own testimony to find him guilty. Similarly, the "Record of Proceedings" for the February 4, 1980, hearing on Plaintiff Tedder states in part: "resident states he was not going to be assigned with a Black, and this is why he refused [his housing assignment]." The plaintiff thus admitted his infraction, and the "Basis for Decision" notes: "Residents testimony given." It therefore can be assumed that the Committee relied on Plaintiff Tedder's admission to find him guilty, though the summary does not so state. Accordingly, the summary for Plaintiff Jones and the summary for Plaintiff Tedder's February 4, 1980, hearing satisfy minimum constitutional requirements. The district court's ruling on these two summaries is reversed.

In the sixteen remaining summaries the inmates either denied guilt or refused to answer the charges. Therefore, even reading the summaries as a whole provides no clue as to why the Committee acted as it did. Accordingly, in those sixteen instances the judgment of the district court

holding the summaries constitutionally inadequate is affirmed.

The line between constitutional adequacy and inadequacy is a fine, but important, one. When the Committee writes "based on all available evidence the resident is guilty," no agency or court can discern the basis for the Committee's rulings. If, however, the Committee writes "resident is lying," or "the guard saw him therefore . . .," or "resident admits he committed the act charged," or "resident does not refute charges," or another statement establishing the evidence underlying its decision, then the inmate is protected from a mischaracterization of the disciplinary action when it comes under review.[5]

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[5] The defendants compare the following Adjustment Committee Summary for Plaintiff Nalls (easily the best summary of the 18 before us):

> Based on all evidence available, including the residents statements and the report from D. Polizzi indicating resident Nalls was observed in the shower room area at the gym and the fact that resident Jones A15622 was assaulted, the Adjustment Committee is convinced that resident Nalls is guilty of assaulting another resident creating a disturbance, unauthorized movement.

with one of their own making:

> The question of Mr. Nalls' guilt or innocence requires the Committee to weigh credibility. We do not find Mr. Nalls' testimony that he was not in the gym credible. As stated in the report of the investigator, a positive identification of Nalls was made by Dillman in the gym. Resident Jones was stabbed. Nalls was the only person seen in close proximity to Jones at the time of the stabbing. We therefore find as a fact that Nalls stabbed Resident Jones.

The defendants claim that beyond insertion of legal niceties the two summaries say "basically the same thing." (Appellants' br. at 52.) They go on to claim that any distinction drawn be-

(Continued on next page)

Prisoners enjoy privileges and rewards which can be taken away when they misbehave. When a prisoner loses the opportunities to shower daily, exercise daily, visit with other prisoners, use the library, watch television, and visit the commissary, he has lost much. Each aspect of the freedoms most of us take for granted becomes more precious as the totality of freedom is reduced. Forfeiting good conduct time credit is perhaps the most serious loss. Prisoners thus must be protected from arbitrary actions extinguishing their privileges. The surest protection is an impartial decisionmaker. And the integrity of that decisionmaker can be insured only if she or he enunciates the bases for her or his actions. The Committee summaries before us do not satisfy that minimal requirement.

IV. Trial

A. Woodruff Dismissal

In their cross-appeal, the plaintiffs contend that the district court improperly dismissed Plaintiff Woodruff for

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tween them would be exalting form over substance by focusing on "hyper-technical semantic distinctions and legal 'buzzwords.' " But a second glance shows that even the defendants' example is superior to the Committee summary. While the summary restates part of the record, the example specifically notes that the Committee discounts the inmate's statements in favor of the investigator. Further, the example clearly states the two pieces of evidence on which the Committee relies in reaching its decision. The summary merely states: "Based on all evidence available."

The constitution does not require the words "credibility" or "proximity" or "positive identification." Due process simply requires a statement of what evidence forms the basis for the Committee finding. Such a statement is more than a boilerplate sentence to be applied in every case, but not so complex as to require a lawyer to draft it. The summary discussed in *Busche v. Burkee*, 649 F. 2d 509, 516 (7th Cir.), *cert. denied*, 454 U. S. 897 (1981), is an example of a simple summary of findings which satisfies due process requirements.

threatening to disrupt the trial. The plaintiff, while waiting to enter the courtroom, ripped off clothes provided to him and threatened to rip them off again in court. The district judge decided that he could not allow the plaintiff an opportunity to carry out that threat.

The sanction of involuntary dismissal with prejudice is severe, and should be used only when lesser sanctions are inappropriate or ineffective. *See, e. g., McCargo v. Hedrick,* 545 F. 2d 393 (4th Cir. 1976). In *Botany v. Heeringa,* 521 F. Supp. 1369 (E. D. Wis. 1981), for example, the district court faced a *pro se* state prison inmate alleging under section 1983 that his civil rights were violated. That plaintiff seriously disrupted the trial. The court, recognizing that the usual punishments for contempt would be ineffectual against a prisoner who sued *in forma pauperis,* dismissed the case with prejudice in order to preserve the orderly operation of the court.

The decision to dismiss the plaintiff's claim falls within the discretion of the district court, and absent an abuse of that discretion we will affirm its judgment. The record supports the court's finding that the plaintiff threatened to disrupt the proceedings. We think the court acted properly in the face of Plaintiff Woodruff's "disruptive, contumacious, stubbornly defiant" conduct. *Illinois v. Allen,* 397 U. S. 337, 343 (1970). The court weighed the plaintiff's rights, the threat of disruption, and the consequences of declaring a mistrial in an action involving seven other plaintiffs and eighteen defendants if Plaintiff Woodruff misbehaved in front of the jury. Under the unusual circumstances of the case the district court's action was justified.

B. Immunity

The defendants argue that they are entitled to absolute, "quasi-judicial" immunity from liability for money damages. The issue has been fully discussed and decided by this circuit. *Chavis v. Rowe,* 643 F. 2d at 1288; *Mary v. Ramsden,* 635 F. 2d 590 (7th Cir. 1980). *See also Hayes II,* 637 F. 2d at 489-90. Despite contrary authority from the *en banc* Fourth Circuit, which embraced the defendants' view in *Ward v. Johnson,* 690 F. 2d 1098 (4th Cir. 1982), we believe that the position stated in *Chavis* and *Mary* and adopted by other circuits, *see, e. g., Jihaad v. O'Brien,* 645 F. 2d 556 (6th Cir. 1981), represents the better view. *See Ward v. Johnson,* 690 F. 2d at 1114-17 (Winter, C. J., dissenting). The district court's determination that the defendants enjoy only qualified, "good faith" immunity is affirmed.

C. Evidence Beyond Administrative Record

The district court erred at trial by refusing to allow the defendants' evidence of the extent of injuries beyond that contained in the administrative records, which consisted of Adjustment Committee Summaries and disciplinary reports. The defendants correctly contend that they should have been allowed to submit evidence beyond the administrative record on the damages issue once the constitutional violations were established. For this contention, they rely principally on reasoning implicit in the Supreme Court's decision in *Carey v. Piphus,* 435 U. S. 247 (1978).

In response, the plaintiffs argue that *Carey* does not control the result in this case; that admitting such addi-

tional evidence would allow prison officials to violate due process rights with impunity, safe in the knowledge that the prisoners never could collect much money even if they prove constitutional violations; that the district court will be forced to conduct mini-trials on damages; and that the district court's decision must therefore be affirmed.

Although *Carey* leads us in the right direction, it does not fully answer the question presented. The *Carey* Court held that the plaintiffs, who complained of being suspended from high school without a hearing, must prove actual injury to recover substantial damages. The Court noted with approval this circuit's position that if the disciplinary action taken against the plaintiffs would have occurred absent the due process violation, then an award of damages would constitute a windfall, rather than compensation, to the plaintiffs. *Carey v. Piphus*, 435 U. S. at 260. This circuit wrote on that issue:

> On remand, therefore, as counsel for plaintiffs recognized at oral argument, if a plaintiff seeks to recover damages flowing from his suspension, the defendants will be entitled to offer evidence showing that there was just cause for the suspension and that therefore he would have been suspended even if a proper hearing had been held.

Piphus v. Carey, 545 F. 2d 30, 32 (7th Cir. 1976), *rev'd on other grounds*, 435 U. S. 247 (1978).

Neither the Supreme Court nor this court considered what evidence would be admissible to prove the extent of damages. Apparently, though, there was little or no administrative record compiled in *Carey*, for the plaintiffs complained that they never received a proper hearing. We think, therefore, that both courts contemplated admis-

sion of evidence beyond that recorded in administrative proceedings. This position is bolstered by a footnote in *Carey*, 435 U. S. at 261, n. 16, in which the Supreme Court addressed the plaintiffs' argument that the effects of any additional evidence on the discretionary judgment of the initial decisionmaker could never be discovered. The Court wrote:

> This holding . . . necessarily assumes that the District Court *can* determine what the outcome would have been if [the plaintiffs] had received their hearing. We presume that this determination will include consideration of the likelihood that any mitigating circumstances to which [the plaintiffs] can point would have swayed the initial decisionmakers.

The plaintiffs argue that *Hayes II*, 637 F. 2d at 488, holds that the defendants' actions must be supported by the administrative record. *Hayes II* is distinguishable, however, because the court there was concerned with proof of the alleged constitutional violation, not proof of whether any injuries would have occurred even in the absence of a constitutional violation.

Most appellate decisions implicitly support the defendant's position. *See, e. g., Reel v. Arkansas Department of Correction*, 672 F. 2d 693 (8th Cir. 1982) (Section 1983 action by employee against employer); *Busche v. Burkee*, 649 F. 2d 509 (7th Cir.), *cert. denied*, 454 U. S. 897 (1981) (Section 1983 action by employee alleging termination without due process); *Kendall v. Board of Education*, 627 F. 2d 1 (6th Cir. 1980) (action by teacher alleging unconstitutional firing); *Rodriguez de Quinonez v. Perez*, 596 F. 2d 486 (1st Cir.), *cert. denied*, 444 U. S. 840 (1979) (Section 1983 action by bank directors alleging uncon-

stitutional firing). In *Busche*, 649 F. 2d at 516, this court specifically recognized a fact relevant to mitigation of damages which could not have been included in the administrative record. *See also id.* at 516 n. 9.

The plaintiffs are put to the proof of their damages. Then the defendants may show that there were no actual injuries, despite the constitutional violations. The only satisfactory method to determine the true extent of damages is to allow each side to muster all relevant evidence. Anything less could afford the plaintiffs an undeserved award.

The plaintiffs' fear that this decision eliminates an important check on the behavior of prison officials is unfounded. Other consequences flow from violations of constitutional rights—especially when the official misconduct is malicious—including injunctive relief and punitive damages, which do not depend on proof of actual injury. *Endicott v. Huddleston*, 644 F. 2d 1208 (7th Cir. 1980).

D. Expunction and Injunctive Relief

The expunction of a disciplinary violation from a prisoner's record may be appropriate when that violation was established contrary to due process guarantees. *Hayes II*, 637 F. 2d 493. We have ruled that in sixteen cases the Adjustment Committee Summaries were constitutionally inadequate. No agency or court in the future will be able to properly assess the basis for the Committee's decisions in those cases. Undeserved adverse collateral consequences could flow from these guilty findings if they are allowed to remain in the inmates' records. On the other hand, we also have found that the Committee members'

refusal to disqualify themselves, found unconstitutional by the district court, may not have been improper.

The decision to expunge a violation from an administrative record should result from balancing the interests of the parties. The defendants have an interest in maintaining accurate records and insuring prison security. The plaintiffs' interest in avoiding adverse consequences is apparent. Here it seems that the plaintiffs' interests outweigh the defendants' interests. Nevertheless, we believe that the district court should balance the equities and exercise its discretion, with the guidance of this court's discussion in *Hayes II*, 637 F. 2d at 493.

Expunction clearly is not warranted for Plaintiff Jones and the February 4, 1980, hearing for Plaintiff Tedder. Additionally, the jury's conclusion that Plaintiff Tedder was not injured by any of the twelve hearings indicates that expunction may not be appropriate for any of his claims. The district court on remand should reconsider the appropriateness of ordering expunction for Plaintiffs Nalls, Armstrong, and Tedder.

The district court also should reconsider the propriety of the plaintiffs' requests for injunctive relief in light of our disposition of the issues.

E. Tedder's Damages

Plaintiff Tedder argues that he should receive $1 nominal damages for each separate violation of his procedural due process rights. (The plaintiff asks for $12, but one of the twelve hearing summaries was constitutionally adequate.)

Nominal damages are not compensation for loss or injury, but rather recognition of a violation of rights. Nominal damages do not measure anything. The plaintiff's argument thus must be rejected; we will not disturb the district court's decision to award only $1 nominal damages.

F. Attorney's Fees and Costs

We review the district court's fee decision under 42 U. S. C. § 1988 (1980) only for an abuse of discretion. *Whitley v. Seibel*, 676 F. 2d 245 (7th Cir.), *cert. denied*, 103 S. Ct. 254 (1982).

Pursuant to itemized statements submitted by the plaintiffs' counsel detailing fees and costs, the district court awarded $14,995 fees and $1,437.96 expenses. We think the award was proper. *See, e. g., Whitley v. Seibel*, 676 F. 2d at 253-54; *Reel v. Arkansas Department of Corrections*, 672 F. 2d at 697-98; *Northcross v. Board of Education*, 611 F. 2d 624 (6th Cir. 1979), *cert. denied*, 447 U. S. 911 (1980); *Loewen v. Turnipseed*, 505 F. Supp. 512 (N. D. Miss. 1980).

The defendants argue that all but $403 of the costs and expenses should be disallowed because they were for transportation to and from court, phone calls, and other related expenses. We think, however, that the district court did not abuse its discretion in determining that those costs were reasonable and necessary to conduct the litigation. *See Northcross*, 611 F. 2d at 639.

The defendants' second argument, that the fee award must be reduced in this case—which was litigated as a single action after counsel was appointed—because one

plaintiff was dismissed and two others received only nominal damages, is incorrect. *See Hensley v. Eckerhart,* 51 U. S. L. W. 4552 (1983). "Where a lawsuit consists of related claims, a plaintiff who has won substantial relief should not have his attorney's fees reduced simply because the district court did not adopt each contention raised." *Id.* at 4556. All the claims in this lawsuit are related; the lawyer's time cannot be apportioned among them.

Finally, we agree with the district court that an award of attorney's fees to a prisoner appearing *pro se* is not appropriate under section 1988. *See, e. g., Cofield v. Atlanta,* 648 F. 2d 986 (5th Cir. 1981); *Lovell v. Snow,* 637 F. 2d 170 (1st Cir. 1981). The plaintiffs' request for fees covering the time which the plaintiffs individually expended on the case was properly denied.

V. Summary

The district court's ruling requiring disqualification of all Adjustment Committee members who are defendants in lawsuits filed by the inmate appearing before the Committee is reversed and the issue remanded so the district court can analyze the circumstances surrounding each unrelated lawsuit to determine whether disqualification was required. The judgments of the district court awarding punitive damages to Plaintiffs Redding and Akbar based on the disqualification issue are reversed.

The district court's ruling allowing the jury to consider damages because the Adjustment Committee refused to call witnesses for Plaintiffs Redding and Armstrong is affirmed. The district court properly recognized the plaintiffs' limited right to call witnesses.

The district court's ruling that the Adjustment Committee Summaries presented in this case fell short of minimum constitutional standards is reversed as to Plaintiff Jones and the February 4, 1980, hearing for Plaintiff Tedder. The ruling is affirmed as to the other sixteen summaries.

The district court's judgment dismissing Plaintiff Woodruff's claims is affirmed.

Adjustment Committee members enjoy only qualified immunity, not absolute immunity, from damages liability.

The district court's judgments on the jury verdicts awarding compensatory damages to Plaintiffs Redding, Akbar, Nalls, and Armstrong are reversed in light of our decision that the district court improperly denied the defendants an opportunity to present evidence beyond the administrative record on the issue of damages. The damages issues are remanded. The judgment awarding Plaintiff Jones $1 nominal damages is reversed. The judgment awarding $1 nominal damages to Plaintiff Tedder is affirmed.

The district court's judgment awarding attorney's fees, costs, and expenses and denying *pro se* fees is affirmed.

In conclusion, we applaud the excellent legal work performed by the plaintiffs' counsel as reflected in the record and the briefs before this court.

AFFIRMED IN PART,
REVERSED IN PART,
AND REMANDED.

A true Copy:
Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

Office-Supreme Court, U.S.
FILED
DEC 29 1983
ALEXANDER L. STEVAS,
CLERK

No. 83-980

In The

Supreme Court of the United States

October Term, 1983

JAMES REDDING, et al.,

Petitioners,

vs.

JAMES FAIRMAN, et al.,

Respondents.

SUPPLEMENTAL APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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SUPPLEMENTAL APPENDIX TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Consolidated causes 79-231
Nos. 79-2217, 79-2304, 80-2132, 80-2013,
79-2310, 80-2108, 80-2152

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

JAMES REDDING, et al.,

Plaintiffs,

vs.

JAMES FAIRMAN, et al.,

Defendants.

ORDER

(Filed December 1, 1981)

The seven plaintiffs in these consolidated cases are or have been inmates at the Pontiac Correctional Center in Pontiac, Illinois. They filed claims under 42 U. S. C. § 1983 alleging that certain actions of the Adjustment Committee, which is the disciplinary board at Pontiac, violated the plaintiffs' fourteenth amendment right to procedural due process. The seven cases were consolidated on the court's own motion under Fed. R. Civ. P. 42(a) since each case presented one or a combination of the following questions of law: (1) Was it a denial of due process to permit a person to sit as a member of the Adjustment Committee, when that person was a defendant in a pending civil rights action filed by the plaintiff and the plaintiff was a respondent before the Adjustment Committee? (2) Was the statement by the Adjustment Committee of the evidence relied upon and the reasons for the disciplinary action taken against the plaintiff constitutionally inadequate and a denial of due process? (3) Was the plaintiff's limited right to call witnesses at the Adjustment Committee hearing curtailed in such a way as to constitute a denial of due process?[1]

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[1]In their second amended complaint, plaintiffs allege that their placement "without a constitutionally legitimated finding of a violation of prison regulations" in dirty cells which lacked certain basic amenities abridged the plaintiffs' eighth amendment right to be free from cruel and unusual punishment. The procedures followed by the Adjustment Committee here raise due process questions only. The conditions of the plaintiffs' confinement may be relevant to the question of what damages were suffered by the plaintiffs as a result of any due process violation.

The plaintiffs and the defendants have filed cross-motions for summary judgment under Fed. R. Civ. P. 56. Under Rule 56, a motion for summary judgment will be granted only when the pleadings and evidentiary materials submitted by the parties reveal that there is no "genuine issue" regarding any "material fact" and that the movant is entitled to judgment as a matter of law. The following facts bearing on the plaintiffs' claims appear undisputed.

I. *James Redding*

On November 19, 1979, the plaintiff received a disciplinary report in which he was cited with violations of Administrative Regulation (A.R.) 804 (II)(A)(1) (disobeying any order from any institutional employee or any prison rule), (13) (forging or altering a pass), and (14) (giving false information to an employee). Specifically, the disciplinary report charged the plaintiff with forging Officer Richard K. Overocker's name on a medical pass.

The disciplinary report issued to the plaintiff included the following paragraph:

> Please be advised that you have the right to appear before the Adjustment Committee and contest this rule violation charge by presenting a written or oral statement or explanation of your actions. You may present to the Committee relevant physical exhibits such as records or documents; you have a right to ask that witnesses be interviewed, and if necessary in the Committee's judgment, you may be called to testify during your hearing. In addition, you may ask the Committee to question the witness along lines you suggest. You must indicate in advance of the hearing the witnesses you wish to have interviewed by filling out the appropriate space on this form, tearing it off, and returning it to the Committee. If you are illiterate or seriously handicapped, you may have the assistance

> of a staff counselor to help you prepare a defense. You may request a reasonable extension of time to prepare for your hearing. If you are found guilty of a serious rule violation and are found to be a danger to the institutional community, you may be placed in segregation and/or deprived of your current grade and statutory good time credit.[2]

Although the disciplinary report stated that witnesses must be requested in advance of the Adjustment Committee hearing, there is a factual question as to whether the plaintiff complied with this requirement.[3]

On November 21, 1979, Redding appeared before the Adjustment Committee on the above charges. The chairman of the three-member Committee was Captain Paul A. Hosier. Since Redding had a civil rights suit for damages pending in this court against Captain Hosier, Redding interposed an objection to Hosier's participation in the disciplinary hearing and requested that Hosier recuse (sic) himself in order to preserve the Committee's impartiatility (sic). Hosier refused the plaintiff's request.

The plaintiff then requested that a handwriting expert, Officer Overocker, and inmate Fisher, who according to Redding had witnessed the signing of his medical pass by Officer Overocker be called as a witness in the

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[2]The disciplinary reports issued to all of the plaintiffs contained the paragraph quoted above.

[3]Copies of the disciplinary report issued to Redding and submitted to the court do not indicate that the plaintiff detached and returned to the Adjustment Committee a written request for witnesses, but in his deposition, the plaintiff testified that he requested witnesses in writing and in advance of the Adjustment Committee hearing.

plaintiff's behalf, but this request was also denied. A notation on the Adjustment Committee summary, which is the written record of the Adjustment Committee proceedings, states that Officer Overrocker was not working at the institution on November 21, 1979. There is no indication in the record why the plaintiff's other requests for witnesses were denied.

At the conclusion of the Adjustment Committee hearing, the plaintiff was found guilty of all of the offenses charged and was sentenced to fifteen days in the segregation unit as well as demotion to C-grade status with loss of audio-visual privileges for thirty days. In recording the basis for its decision and the evidence relied upon, the Committee stated as follows:

> "All evidence presented has convinced the committee the resident is guilty of forging a pass or altering a pass, giving false information to a [sic] employee and disobeying a prison rule."

The Committee's finding of guilt and the punishment imposed was approved by Warden James Fairman on November 28, 1979, but on June 30, 1980, records of the purported violations were expunged from the plaintiff's master record file since Officer Overrocker later admitted that he had been mistaken that the plaintiff had forged his signature.

II. *Jamal Ali Akbar*

On January 10, 1980, Jamal Ali Akbar, a/k/a James Benson, received a disciplinary report alleging violations of A.R. 804(II)(A)(1) (disobeying any order from any institutional employee or any prison rule), (14) (giving false information to an employee), and (15) (passing or

receiving contraband from another resident, visitor and/or employee). Specifically, the plaintiff was charged with possession of gang-related materials and two "kites," which are unauthorized letters written from one prisoner to another.

Akbar appeared before the Adjustment Committee on January 13, 1980. Although Akbar did not request witnesses in writing in advance of the Adjustment Committee hearing[4] and the Adjustment Committee summary notes no oral request by Akbar for witnesses, the plaintiff alleges that at the hearing he requested that a witness be called and that his request was denied.

Captain Hosier, who was a defendant in a civil rights suit for damages filed by the plaintiff and pending on January 13, 1980, was chairman of the Adjustment Committee. Although the plaintiff objected that he could not receive a fair hearing if Captain Hosier remained on the Committee, Hosier stayed on the Committee. The Committee thereafter found Akbar guilty of violating A.R. 804(II)(A)(1) and (15), but not guilty of violating subsection (14). The Adjustment Committee stated that the evidence relied upon and the reasons for the disciplinary action taken were as follows:

> Based on resident's testimony and all evidence presented, the committee's convinced that resident is guilty of carrying kites and other unauthorized written material into the segregation unit and violated the trust in his law clerk position.

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[4]See the disciplinary report issued to the plaintiff on January 10, 1980. Plaintiff's Response to Defendants' Answer, Exhibit H (filed on April 22, 1980).

A disciplinary job transfer was imposed pursuant to the finding of guilt, but reports of the violations were expunged from the plaintiff's records on February 20, 1980 after Reverend Imam Khalilallah verified that the alleged gang-related materials in the plaintiff's possession were in fact religious materials.

III. *Donald Woodruff*

On November 27, 1979, the plaintiff Donald Woodruff was issued a disciplinary report for allegedly cursing and threatening an officer and disobeying an order to leave the yard. Violations of A.R. 804(II)(A)(1) (disobeying any order from any institutional employee or any prison rule) and (4) (swearing, cursing, or use of any other vulgar, abusive, insolent, threatening, or improper language toward any other resident or employee or indecency in language, action, or gesture at any time) were alleged.

The Adjustment Committee hearing on the above charges was held on November 29, 1979. Although the plaintiff did not request witnesses in advance of the Adjustment Committee hearing by detaching and returning the bottom portion of the disciplinary report to the Adjustment Committee, the plaintiff states that at the hearing he requested that Officer Hoss be called as a witness. The plaintiff's request was denied although the plaintiff in his deposition testified that Officer Hoss was outside the hearing room at the time the request was made.

The Adjustment Committee found the plaintiff guilty of the charges cited in the disciplinary report and sentenced the plaintiff to seven days in segregation, a demotion to C-grade status for thirty days, and loss of yard privileges for thirty days. The portion of the Adjustment

Committee summary in which the Committee is supposed to recount the basis for its decision and the evidence relied upon says as follows:

> "All evidence presented and residents testimony given has convinced the committee the resident is guilty of improper use of language, and disobeying a direct order."

IV. *Donald Jones*

The plaintiff Donald Jones was involved in a fight with another inmate named Rodriguez on November 27, 1979. Although the plaintiff contended and still contends, that on that date Rodriguez instigated the fight. The plaintiff was cited for violating A.R. 804 (II)(A)(1) (disobeying any order from any institutional employee or any prison rule), (2) (being disrespectful to any employee of the institution or to any person visiting the institution), and (5) assaulting an employee or resident or fighting with a resident or employee). The Adjustment Committee found the plaintiff guilty of the offenses charged and imposed a sentence of six months C-grade status with loss of audio privileges, six months in segregation and six months loss of good conduct time credit. The Committee identified the basis for its decision as follows:

> "All evidence presented and residents testimony given has convinced the committee the resident is guilty of striking a [sic] employee and or (resident) disrespecting a prison rule and order not to fight."

Warden Fairman reduced the punishment to be imposed on the plaintiff to ninety days C-grade status, placement in segregation, and loss of good conduct time credit.

V. *Paul William Tedder*

The plaintiff, Paul William Tedder, complains of the procedures followed at twelve different disciplinary committee proceedings which occurred during 1979 and during 1980.[5] Four of the defendants, Hosier, Shehorn, Santos, and Wheat, sat as members of the Adjustment Committee on some of the above dates, and refused to remove themselves from the Committee when Tedder appeared before the Committee. The refusal was despite Tedder's protests that the defendants were prejudiced against him because they were defendants in pending lawsuits filed by Tedder.

Tedder failed to request in writing in advance of any of the Adjustment Committee hearings at issue in this case that witnesses be called in his behalf. Tedder contends, however, that he made verbal requests for witnesses at seven of the hearings. Those requests were denied.

At all but one of his hearings before the Adjustment Committee, Tedder was found guilty of disciplinary infractions. Punishment was imposed as follows:

(1) August 10, 1979—For violating A.R. 804 (II)-(A)(1) and (3) (refusing properly authorized work and or housing assignments), a sentence of fifteen days in the segregation unit was imposed.

(2) September 30, 1979—For violating A.R. 804 (II)-(A)(1) and (3), a sentence of fifteen days in segregation plus fifteen days of C-grade status was imposed.

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[5]August 4, 1979; August 10, 1979; September 30, 1979; November 3, 1979; November 18, 1979; February 3, 1980; February 4, 1980; February 17, 1980; March 2, 1980; March 16, 1980; and twice on March 23, 1980.

(3) November 3, 1979—For violating A.R. 804 (II)-(A)(1), Tedder received fifteen days in segregation, fifteen days C-grade status, and loss of audio-visual privileges.

(4) November 18, 1979—For violating A.R. 804 (II)-(A)(1) and (3) a sentence of fifteen days segregation, fifteen days in C-grade status, and loss of audio-visual privileges was imposed.

(5) February 2, 1980—For violating A.R. 804 (II)-(A)(1), (2) (being disrespectful to any employee of the institution), and (4) (swearing, cursing, or use of any other vulgar, abusive, insolent, threatening language), the plaintiff was demoted to C-grade status for fifteen days.

(6) February 4, 1980—For violating A.R. 804 (II)-(A)(1) and (3), the plaintiff lost audio-visual privileges, was demoted to C-grade status for fifteen days, and was given fifteen days in segregation.

(7) February 17, 1980—For violating A.R. 804 (II)-(A)(1) and (3), the plaintiff received fifteen days in segregation, thirty days of C-grade status, and loss of audio-visual equipment.

(8) March 2, 1980—The plaintiff received the same sentence as was imposed on February 17, 1980.

(9) March 16, 1980—For violating A.R. 804 (II)-(A)(4) and (8) (committing a mutinous act, inciting to riot and/or general disturbance), the Adjustment Committee recommended a sentence of fifteen days in segregation, thirty days C-grade status, and loss of audio-visual privileges. The segregation time was reduced to seven days by Warden Fairman.

(10) March 23, 1980—For violating A.R. 804 (II)-(A)(1), (2), and (3), the plaintiff was assigned to segregation for fifteen days and demoted to C-grade status for fifteen days with loss of audio-visual privileges.

(11) March 23, 1980—The plaintiff received the same sentence as was imposed on February 17, 1980.

The reasons given for the disciplinary action taken on each of these dates and the statements of the evidence relied upon were as follows:

(1) August 10, 1979—"Based on all availble [sic] information presented to this committee, and residents testimony the committee is convinced resident is guilty of refusing to leave segregation."

(2) September 30, 1979—"Based upon all available information this committee believes resident guilty."

(3) November 3, 1979—"Based upon the evidence presented by the officer's report the resident of [sic] found guilty of refusing a new housing assignment and has thereby violated an institutional rule."

(4) November 18, 1979—"Based on resident's testimony and all evidence presented the Committee is convinced that resident is guilty of refusing to leave segregation."

(5) February 2, 1980—"Based upon the evidence presented we find the resident guilty of cursing and not doing what he was told."

(6) February 4, 1980—"Residents testimony given and all evidence presented has convinced the committee the resident is guilty of refusing proper housing assignment, cursing a [sic] officer.

(7) February 17, 1980—"Based on all evidence available, the Adjustment Committee is convinced the resident is guilty of refusing proper housing."

(8) March 2, 1980—"Based on all evidence available including the residents statements and the statement of the officer that Tedder did refuse to leave segregation, the Adjustment Committee is convinced the resident is guilty of refusing proper housing, and disregarding a prison rule."

(9) March 16, 1980—"Based on all available evidence including the fact the reporting officer does identify resident Tedder as using vulgar and abusive language the Adjustment Committee is convinced the resident is guilty of using vulgar language and creating a disturbance."

(10) March 23, 1980—"Based on all evidence available, including the reporting employees statements that the resident did refer to the employee as "you fuckers" and referred to Ms. Ruck as a "bitch whore," the Adjustment Committee is convinced the resident is guilty of disregarding a prison rule, disrespect, and using vulgar language."

(11) March 23, 1980—"Based on all evidence available, including the statement of the reporting officer that the resident refused to leave segregation, the Adjustment Committee is convinced the resident is guilty of refusing proper housing."

VI. *Melvin Nalls*

On March 14, 1980, plaintiff Nalls was charged in a disciplinary report with stabbing another inmate. The Adjustment Committee found the plaintiff guilty of violating A.R. 804(II)(A)(1), (5) (assaulting an employee or resident), (6) (leaving a cell, a place of assignment, or other appointed place without permission), (8) committing a mutinous act, inciting to riot and (or general disturbance), (10) (making or having possession of any kind of dangerous weapon), and (28) (violating the general laws of the State or Federal government)., The Committee sentenced the plaintiff to one year in the segregation unit, one year loss of good conduct time credit, one year demotion to C-grade status, and loss of audio-visual privileges. In the space reserved on the Adjustment Committee sum-

mary for the "basis for decision" and "evidence relied upon," the Committee noted:

> "Based on all evidence available, including the residents statements and the report from D. Polizzi indicating resident Nalls was observed in the shower room area at the gym and the fact that resident Jones A-15622 was assaulted, the Adjustment Committee is convinced that resident Nalls is guilty of assaulting another resident, creating a disturbance, unauthorized movement."

VII. *Jeffrey Armstrong*

On February 9, 1980, the plaintiff received a disciplinary citation which alleged that the plaintiff had cursed at a guard and grabbed his arm. Although "copies"[6] of the disciplinary report issued to the plaintiff and submitted to the court do not indicate that the plaintiff detached and returned a written request for witnesses to the Adjustment Committee, the plaintiff states in his deposition that he made such a written request. This request was denied, and the plaintiff was thereafter found guilty of violating A.R. 804(II)(A)(1), (2), (4), (5), and (6). A sentence of thirty days in the segregation unit and a demotion to C-grade status for six months was then imposed with the basis for the decision and the evidence relied upon given as follows:

> "Based on all available evidence including the residents statements, the Adjustment Committee is convinced the resident is guilty of disregarding a prison rule, disrespect, cursing, and assaulting an employee by grabbing the employees arm."

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[6]They may be copies of copies and not copies of the originals issued to Armstrong.

VIII. *Impartial Decisionmakers*

At some of the Adjustment Committee hearings where the plaintiffs, Redding, Akbar, and Tedder were found guilty of disciplinary infractions, one or more of the members of the Adjustment Committee were defendants in pending lawsuits for damages filed by the plaintiffs.[7] The question before the court is whether that circumstance subjected the plaintiffs to adjudication of their cases by a biased hearing officer and, consequently, to a denial of due process of law.

The Supreme Court has ruled that prisoners are entitled to certain minimal procedural safeguards before disciplinary sanctions for major misconduct can be imposed. *Wolff v. McDonnell*, 418 U. S. 539 (1974). In *Wolff*, however, the Court held that an Adjustment Committee made up of the Associate Warden, the Correctional Industries Superintendent, and the Reception Center Director did not present "such a hazard of arbitrary decisionmaking" that a due process violation resulted. *Id.* at 571. When this hazard can occur in the prison disciplinary context has not been specified by the Supreme Court.

The Seventh Circuit Court of Appeals, however, affirmed the decision of a district court that due process re-

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[7]The court takes judicial notice of the following suits in which money damages were sought from some of the defendants: *Redding v. Franzen*, No. 79-2204, which was filed in this court; *Akbar v. Fairman*, No. 79-2207, filed in this court; *Tedder v. Fairman*, No. 79-MR-44, filed in the Circuit Court of Livingston County, Illinois; *Tedder v. Fairman*, No. 80-MR-22, filed in the Circuit Court of Livingston County, Illinois; *Tedder v. Fairman*, No. 80-MR-72 filed in the Circuit Court of Livingston County, Illinois; and *Tedder v. Fairman*, No. 80-MR-160 filed in the Circuit Court of Livingston County, Illinois.

quires a hearing before a "neutral and detached" person before an inmate can be transferred to a control unit for administrative reasons. *Bono v. Saxbe*, 620 F. 2d 609 (7th Cir. 1980) *aff'd*, 450 F. Supp. 934 (E.D. Ill. 1978) and 462 F. Supp, 146 (E.D. Ill. 1978). If a hearing before a "neutral and detached" party is necessary before certain types of administrative action affecting a prisoner can be taken, then it follows that a disciplinary hearing, which may result in segregation or a substantially longer term of incarceration through loss of good conduct time, must be held before "neutral and detached" decisionmakers. The committee members at least should not be defendants in pending lawsuits for damages instituted by the very persons over whom the committee sits in judgment.

There is a natural suspicion that prison officials who sit on Adjustment Committees will be biased in favor of reporting officers and against prisoners. But when a member of the Adjustment Committee is also a defendant in a suit for damages[8] filed by the prisoner appearing before the Committee, that suspicion of bias and arbitrary action[9] rises to the level of a reasonable expectation. Given the adversary relationship of the hearing officer and the inmate the right to a neutral and detached decisionmaker has not been satisfied and a denial of due process has occurred. The court therefore concludes that the plaintiffs, Redding, and Akbar, sufferred violations of their consti-

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[8]The court need not decide the question of whether a due process violation occurs when a member of the Adjustment Committee is a defendant in a suit for injunctive relief only.

[9]The Supreme Court observed in *Wolff v. McDonnell* that "[t]he touchstone of due process is protection of the individual against arbitrary action of government." Id. at 558.

tutional right to due process of law at the Adjustment Committee hearings at issue in this case and that plaintiff Tedder's rights were violated at the hearings held on August 10, 1979, September 30, 1979, November 3, 1979 and February 4, 1980.[10]

IX. *Constitutional Adequacy of the Adjustment Committee Summaries*

Each of the plaintiffs contends that his constitutional right to due process of law was violated when he was given only cursory statements of the evidence relied upon by the Adjustment Committee in reaching its determinations of guilt. The plaintiffs also point out that no statement of the Committee's reasons for the disciplinary action taken was given in any case. In *Wolff v. McDonnell,* 418 U.S. 539, 564 (1974), the Supreme Court held that due process entitles an inmate in a prison disciplinary proceeding to a "written statement by the fact-finders as to the evidence relied on and reasons" for the disciplinary action taken. This procedural safeguard protects the prisoner from adverse "collateral consequences" arising from misinterpretations of the nature of the disciplinary proceeding. It also ensures, by facilitating judicial review, that prison officials will act fairly. *Id.* at 565.

In *Hayes v. Walker,* 555 F.2d 625 (7th Cir. 1977), the Court of Appeals for the Seventh Circuit addressed

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[10]No proof has been submitted to the court confirming or refuting the fact that the plaintiff had a lawsuit pending against defendant Hosier at the time the plaintiff appeared before the Adjustment Committee on November 18, 1979. Summary judgment on the plaintiff's due process claim for that date cannot therefore be entered.

the question of the constitutional adequacy of an Adjustment Committee summary. In *Hayes* the report stated: "The Committee's decision is based on the violation report as written and upon the report by the special investigator which during your absence was made part of the record." The Court of Appeals held that this statement, which merely referred to the disciplinary and the special investigator's reports, failed to meet the minimum requirements of due process as set forth in *Wolff* because the statement failed to protect a prisoner from adverse "collateral consequences" and from unfair administrative action. In the court's opinion, a main defect in the report was the omission of "the essential facts upon which inferences were based." *Id.* at 633.

The Adjustment Committee statements which were constitutionally challenged in another Seventh Circuit case, *Chavis v. Rowe,* 643 F. 2d 1281 (7th Cir. 1981), provide an additional example of an Adjustment Committee summary which fails to comport with the minimum requirements of due process of law. The report at issue in *Chavis* stated: "We recognize and consider the resident[']s statement[,] however [,] we accept the reporting officer[']s charges." That statement, the court held, was constitutionally deficient since it did not specify the evidence relied upon by the reporting officer and failed to give a "clear indication" of why the reporting officer's representations were considered credible while evidence which contradicted his report was not. *Id.* at 1287.

A case involving a sufficiently specific statement of the evidence relied upon by the Committee to satisfy the requirements of due process is *United States ex rel. Houston v. Warden, Stateville Correctional Center,* 635 F. 2d

656, 659 (7th Cir. 1981). The court found constitutionally adequate an Adjustment Committee report which "specifically found that petitioner attempted to steal food off the cart, that he stopped the food cart and attempted to overturn it and that thereby he caused a general disturbance." The court, however, did not avert to the additional requirement set forth in *Wolff* that a prison disciplinary committee give *reasons* for the punishment imposed.[11]

None of the Adjustment Committee reports at issue in these consolidated cases satisfy even the minimum requirements of due process of law. Many of the reports are even less specific than the reports found constitutionally deficient in *Hayes v. Walker, supra;* not only do they not incorporate other reports by reference, as did the statement at issue in *Hayes,* but they simply state that the Committee's findings are based on "all evidence presented," on "all available information," or on the resident's testimony disputing the charges against him and "all other evidence."[12] Other of the Adjustment Committee summaries specify in greater detail the Committee's sources of information, but omit, as did the

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[11]This independent constitutional requirement was recognized by the court in *Craig v. Franke,* 478 F. Supp. 19, 21 (E. D. Wis. 1979) (plaintiff deprived of procedural due process since no reason given for sentence of three days in segregation).

[12]See the Adjustment Committee Summaries finding plaintiffs Redding, Akbar, Woodruff and Armstrong guilty of disciplinary infractions as well as the Adjustment Committee reports regarding plaintiff Tedder which are dated August 10, September 30, and November 18, 1979 and February 2, February 4, and February 17, 1980.

statement in *Hayes*, the "essential facts upon which inferences were based."[13]

In addition, it appears from the Adjustment Committee reports that the Committee generally gives credence to the short written report of a correctional officer, automatically discounting any contradictory information. Nowhere in the Adjustment Committee reports is a reason articulated for giving such credence to a short written report whose accuracy is disputed by the prisoner. The reports accordingly fall short of the standards set by the Seventh Circuit in *Chavis v. Rowe, supra.*

Finally, in all but one the Adjustment Committee summaries, the Committee sets forth no reasons for the nature and amount of punishment imposed other than the implicit reason that the plaintiffs had been found guilty of disciplinary infractions.[14] The punishment which can be imposed by the Adjustment Committee for a disciplinary infraction ranges anywhere from a loss of audio-visual privileges to a revocation of one-year of good conduct time credit. When the Committee fails to articulate

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[13]In essence, most of these Adjustment Committee reports state: We find the prisoner guilty of the offenses charged because the reporting officer has charged him with those offenses. *See e. g.*, the Adjustment Committee reports regarding plaintiff Tedder which are dated November 3, 1979, March 16, 1980, and March 23, 1980. In addition, the foregoing summaries dated March 16, 1980 and March 23, 1980 are incomplete because they specify only some but not all of the sources of information upon which the Committee relied as well as omit essential facts."

[14]In the Adjustment Committee report given to plaintiff Akbar, the reason apparently given for the punishment imposed, a disciplinary job transfer, is that the plaintiff "violated the trust in his law clerk position."

any reasons for the amount of punishment imposed, the prisoner is unprotected from unfair and arbitrary administrative action and may also experience adverse "collateral consequences" because of third parties' speculation regarding why the prisoner received the type of punishment that he did. The plaintiffs, I conclude, have for the reasons stated above, been denied due process through the constitutional inadequacy of the written statements of the Adjustment Committee.

X. *Denial of Requests to Call Witnesses*

Plaintiffs Redding, Akbar, Woodruff, Tedder, and Armstrong allege that their right to due process of law was violated when their requests to call witnesses at the Adjustment Committee hearings were denied. Akbar, Woodruff, and Tedder, however, did not follow the required procedures for requesting the attendance of witnesses at their disciplinary hearings. They were required to fill out and send to the Adjustment Committee the witness request forms at the bottom of the disciplinary reports but did not do so. The materials in support of the motions for summary judgment do not show whether plaintiffs Redding and Armstrong complied with the required procedures.

In *Wolff v. McDonnell*, 418 U. S. 539 (1974), one of the rights discussed by the Supreme Court was the right of the prisoner to call witnesses in his own behalf. The importance of this right was recognized by the court. At same time the Court observed that the right might be limited under certain circumstances because of the need to preserve institutional security or to maintain correctional goals. *Id.* at 566. Specifically, the Court held that

"the inmate facing disciplinary proceedings should be allowed to call witnesses and present documentary evidence in his defense when permitting him to do so will not be unduly hazardous to institutional safety or correctional goals." *Id.* The Court commended the practice of stating the reason for not allowing an inmate to call a particular witness, but held that this practice was not constitutionally required.

The Court of Appeals for the Seventh Circuit interpreting *Wolff* in *Hayes v. Walker*, 555 F. 2d 625 (7th Cir. 1977), held that although a statement of reasons for the denial of a request to call witnesses was not required by the Constitution, some support for the denial had to appear in the record of the disciplinary proceeding. *Id.* at 630.

The disciplinary reports issued to plaintiffs Akbar, Woodruff, and Tedder, which reveal that the plaintiffs did not request witnesses in advance and in writing, represent a sufficient record under *Hayes* to support the curtailment of the plaintiffs' right to call witnesses.[15]

Limiting the right to call witnesses by requiring that witnesses be requested prior to the convening of the Adjustment Committee hearing is a reasonable limitation on the right to call witnesses in the prison disciplinary context. Requiring prior designation of witnesses facilitates the screening by prison officials of witness requests to determine whether calling a witness will imperil institutional security or subvert correctional goals. For

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[15]The original disciplinary report forms are intact and the bottom portion for summoning witnesses is intact and not filled out and torn off.

example, when a correctional officer is requested as a witness, prison officials must be given time to determine whether adjustments can be made in work assignments which will permit the attendance of the official at the disciplinary committee hearing without creating a security risk elsewhere in the institution.[16]

Because plaintiffs Akbar, Woodruff, and Tedder did not follow the required procedure in requesting witnesses at their Adjustment Committee hearing, the defendants' motion for summary judgment on the above plaintiffs' claims based on the denial of their requests to call witnesses will be allowed. Since the court is uncertain whether plaintiffs Redding and Armstrong complied with the required procedures, a question of fact exists on that point which must be resolved at trial. Summary judgment on that point will be denied.

XI. *Absolute Immunity*

The defendants assert that they are entitled to absolute "quasi-judicial" immunity from liability for money damages. In *Butz v. Economou*, 438 U. S. 478 (1978), the Supreme Court addressed the question of when exe-

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[16]Although plaintiff Woodruff claims that Officer Hoss was near the place where the Adjustment Committee was meeting when the plaintiff orally requested that Hoss be called as a witness, the court will not interfere with or perhaps undermine the institutional policy of requiring advanced written requests for witnesses by holding that when a witness is within a certain distance from the place where the Adjustment Committee is meeting the institutional policy is abrogated. In the court's opinion, this refusal to require deviations from the institutional policy is consonant with the Seventh Circuit's admonition that judges should not "unduly interject" themselves into the decisions of prison officials denying prisoners' requests for particular witnesses. *Hayes v. Walker*, 555 F. 2d 625, 630 (7th Cir. 1977).

cutive officials are entitled to absolute, as opposed to qualified, immunity from suit. The Court initially held that as a general rule, executive officials should only be accorded qualified immunity from suit.[17] *Id.* at 407. Only in "exceptional situations where it is demonstrated that absolute immunity is essential for the conduct of the public business" should executive officials be granted absolute immunity from suit, *Id.* at 507-508, and the burden rests on the official seeking absolute immunity to show that his functions necessitate a departure from the general rule of qualified immunity. *Id.* at 506.

In determining whether or not an executive official is entitled to absolute immunity, the Supreme Court indicated in *Butz* that the risk of unconstitutional action by the official must be balanced against the interest in preserving the official's independent judgment when making discretionary decisions. *Id.* at 514. Thus, judges are accorded absolute immunity from suit, not only because they render decisions which are the subject of controversy, but also because safeguards built into the judicial process minimize the chance that judges will commit unconstitutional acts:

> The insulation of the judge from political influence, the importance of precedent in resolving controversies, the adversary nature of the process, and the correctability of error on appeal are just a few of the many checks on malicious action by judges. Advocates are restrained not only by their professional

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[17] In the opinion of the Court, officials with only qualified immunity from suit would not be unduly hampered in the exercise of their independent judgment since liability would result only when the officials knew or should have known that their actions transgressed "clearly established constitutional limits." *Id.* at 506. Liability would not exist for mere mistakes in judgment.

> obligations, but by the knowledge that their assertions will be contested by their adversaries in open court. Jurors are carefully screened to remove all possibility of bias. Witnesses are, of course, subject to the rigors of cross-examination and the penalty of perjury. Because these features of the judicial process tend to enhance the reliability of information and the impartiality of the decisionmaking process, there is a less pressing need for individual suits to correct constitutional error.

Id. at 512.

In *Butz,* the Court held that the federal hearing examiners are entitled to absolute "quasi-judicial" immunity because they perform "adjudicatory functions" and because they are subject to many "restraints" and "safeguards" limiting the risk of unconstitutional action. *Id.* at 514. The basis for granting absolute immunity was the "functional comparability" of these officials to judges. *Id.* at 512.

Adjustment Committee members are not functionally comparable to judges and entitled to absolute immunity. There is no evidence before the court that Adjustment Committees have existent constraints on the exercise of their discretion. In *Mary v. Ramsden,* 635 F. 2d 590, 600 (7th Cir. 1980), the Court of Appeals for the Seventh Circuit rejected the argument that the chairman of a disciplinary committee at a juvenile correctional institution is entitled to absolute immunity, noting that the chairman's function was not comparable to that of a judge but was rather disciplinary in nature. The reasoning of *Mary* extends to members of disciplinary committees at adult correctional institutions. The Adjustment Committee members do not make their decisions in an adversary context, are not bound by precedent, and apparently

are not insulated from political influence. The defendants' motion for summary judgment on all of the plaintiffs' claims for damages will therefore be denied.

IT IS THEREFORE ORDERED that the motion of plaintiffs Redding, Akbar, and Tedder for summary judgment on their claims relating to biased decision making be, and hereby is, allowed except as to Tedder's claim relating to the Adjustment Committee hearing held on November 18, 1979.

IT IS FURTHER ORDERED that the plaintiffs' motion for summary judgment on the claims regarding the constitutional inadequacy of certain Adjustment Committee reports be, and hereby is, allowed.

IT IS FURTHER ORDERED that the motion of plaintiffs' Akbar, Woodruff, and Tedder for summary judgment on their claims regarding the denial of requests for witnesses be, and hereby is, denied.

IT IS FURTHER ORDERED that the motions of the plaintiffs Redding and Armstrong for their claims regarding the denial of requests for witnesses be, and hereby are, denied.

IT IS FURTHER ORDERED that the defendants' motion for summary judgment on the plaintiffs' claims relating to biased decision makers and the constitutional adequacy of certain Adjustment Committee reports be, and hereby is, denied.

IT IS FURTHER ORDERED that the defendants' motion for summary judgment on the claims of plaintiffs Akbar, Woodruff, and Tedder regarding the denial of their requests for witnesses be, and hereby is, allowed.

IT IS FURTHER ORDERED that the defendants' motion for summary judgment on all of the plaintiffs' claims for damages be, and hereby is, denied. The Clerk is hereby directed to enter judgment accordingly.

ENTER this 1st day of DECEMBER, 1981.

/s/ HAROLD A. BAKER
HAROLD A. BAKER
United States District Judge

Judgment on Decision by the Court CIV 32 (7/63)

Civil Action File No. 79-2313
79-2217, 79-2304, 80-2132, 80-2013,
79-2310, 80-2108 & 80-2152

UNITED STATES DISTRICT COURT

For The
CENTRAL DISTRICT OF ILLINOIS

JAMES REDDING, et al.,

vs.

JAMES FAIRMAN, et al.,

JUDGMENT
(Filed December 3, 1981)

This action came on for (hearing) before the Court, Honorable HAROLD A. BAKER, United States District Judge, presiding, and the issues having been duly (heard) and a decision having been duly rendered,

It is Ordered and Adjudged that the motion of plaintiffs Redding, Akbar, and Tedder for summary judgment on their claims relating to biased decision making be, and hereby is, allowed except as to Tedder's claim relat-

ing to the Adjustment Committee hearing held on November 18, 1979.

IT IS FURTHER ORDERED that the plaintiffs' motion for summary judgment on the claims regarding the constitutional inadequacy of certain Adjustment Committee reports be, and hereby is, allowed.

IT IS FURTHER ORDERED that the motion of plaintiffs' Akbar, Woodruff, and Tedder for summary judgment on their claims regarding the denial of requests for witnesses be, and hereby is, denied.

IT IS FURTHER ORDERED that the motions of the plaintiffs Redding and Armstrong for their claims regarding the denial of requests for witnesses be, and hereby are, denied.

IT IS FURTHER ORDERED that the defendants' motion for summary judgment on the plaintiffs' claims relating to biased decision makers and the constitutional adequacy of certain Adjustment Committee reports be, and hereby is, denied.

IT IS FURTHER ORDERED that the defendants' motion for summary judgment on the claims of plaintiffs Akbar, Woodruff, and Tedder regarding the denial of their requests for witnesses be, and hereby is, allowed.

IT IS FURTHER ORDERED that the defendants' motion for summary judgment on all of the plaintiffs' claims for damages be, and hereby is, denied.

Dated at DANVILLE, ILLINOIS, this 3rd day of December, 1981.

/s/ Robert J. Kauffman
Clerk of Court

Judgment On Jury Verdict CIV 31 (7-63)

Civil Action File No. 79-2313

UNITED STATES DISTRICT COURT

For The
CENTRAL DISTRICT OF ILLINOIS
DANVILLE DIVISION

JAMES REDDING, et al.,

vs.

CAPTAIN HOSIER, et al.

JUDGMENT
(Filed January 19, 1982)

This action came on for trial before the Court and a jury, Honorable HAROLD A. BAKER, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

It is Ordered and Adjudged Judgment entered in favor of the Plaintiff Nalls and against the Defendants Hanson, Noonan, Martinez and Fairman in the sum of $1,000.00 (ONE THOUSAND DOLLARS) plus costs of suit.

Dated at DANVILLE, ILLINOIS, this 19th day of January, 1982.

/s/ Robert J. Kauffman
Clerk of Court

Judgment On Jury Verdict CIV 31 (7-63)

Civil Action File No. 79-2313

UNITED STATES DISTRICT COURT

For The
CENTRAL DISTRICT OF ILLINOIS
DANVILLE DIVISION

JAMES REDDING, et al.,

vs.

CAPTAIN HOSIER, et al.

JUDGMENT
(Filed January 19, 1982)

This action came on for trial before the Court and a jury, Honorable HAROLD A. BAKER, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

It is Ordered and Adjudged Judgment entered in favor of the Plaintiff Akbar and against Defendant Hosier in the sum of $3,700.00 (THREE THOUSAND, SEVEN HUNDRED DOLLARS) plus costs of suit.

Dated at DANVILLE, ILLINOIS, this 19th day of January, 1982.

/s/ Robert J. Kauffman
Clerk of Court

Judgment On Jury Verdict CIV 31 (7-63)

Civil Action File No. 79-2313

UNITED STATES DISTRICT COURT

For The
CENTRAL DISTRICT OF ILLINOIS
DANVILLE DIVISION

JAMES REDDING, et al.,
vs.
CAPTAIN HOSIER, et al.

JUDGMENT
(Filed January 19, 1982)

This action came on for trial before the Court and a jury, Honorable HAROLD A. BAKER, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

It is Ordered and Adjudged Judgment entered in favor of Plaintiff Armstrong and against the Defendants Hosier, Hanson, Klaren, and Fairman in the sum of $1,500.00 (ONE THOUSAND FIVE HUNDRED DOLLARS) plus costs of suit.

Dated at DANVILLE, ILLINOIS, this 19th day of January, 1982.

/s/ Robert J. Kauffman
Clerk of Court

Judgment On Jury Verdict CIV 31 (7-63)

Civil Action File No. 79-2313

UNITED STATES DISTRICT COURT

For The
CENTRAL DISTRICT OF ILLINOIS
DANVILLE DIVISION

JAMES REDDING, et al.,

vs.

CAPTAIN HOSIER, et al.

JUDGMENT
(Filed January 19, 1982)

This action came on for trial before the Court and a jury, Honorable HAROLD A. BAKER, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

It is Ordered and Adjudged Judgment entered in favor of the Plaintiff Redding and against Defendants Hosier, Marion, Klaren and Fairman in the sum of $220.00 (TWO HUNDRED & TWENTY DOLLARS) plus costs of suit.

Dated at DANVILLE, ILLINOIS, this 19th day of January, 1982.

/s/ Robert J. Kauffman
Clerk of Court

Judgment On Jury Verdict CIV 31 (7-63)

Civil Action File No. 79-2313

UNITED STATES DISTRICT COURT

For The
CENTRAL DISTRICT OF ILLINOIS
DANVILLE DIVISION

JAMES REDDING, et al.,

vs.

CAPTAIN HOSIER, et al.

JUDGMENT
(Filed January 19, 1982)

This action came on for trial before the Court and a jury, Honorable HAROLD A. BAKER, United States Dis-

trict Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

It is Ordered and Adjudged Judgment entered in favor of the Plaintiff Tedder and against the Defendants Wheat, Hanson, Des LosSantos, Fiarman, Shehorn, Marion, Johnson, Noonan, Martinez, Mills, Hosier, Foster, Livingston, Klaren, Williams and Poe in the sum of $1.00 (ONE DOLLAR) as nominal damages plus costs of suit.

Dated at DANVILLE, ILLINOIS, this 19th day of January, 1982.

/s/ Robert J. Kauffman
Clerk of Court

Judgment On Jury Verdict CIV 31 (7-63)

Civil Action File No. 79-2313

UNITED STATES DISTRICT COURT

For The
CENTRAL DISTRICT OF ILLINOIS
DANVILLE DIVISION

JAMES REDDING, et al.,

vs.

CAPTAIN HOSIER, et al.

JUDGMENT
(Filed January 19, 1982)

This action came on for trial before the Court and a jury, Honorable HAROLD A. BAKER, United States District Judge, presiding, and the issues having been duly tried and the jury having duly rendered its verdict,

It is Ordered and Adjudged Judgment entered in favor of the Plaintiff Jones and against the Defendants Wenzelman, Marion, Mills, and Fairman in the sum of $1.00 (ONE DOLLAR) as nominal damages plus costs of suit.

Dated at DANVILLE, ILLINOIS, this 19th day of January, 1982.

/s/ Robert J. Kauffman
Clerk of Court

NO. 79-2313
(Consolidated cases)

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS

JAMES REDDING, et al.,
Plaintiffs,

vs.

J. W. FAIRMAN, et al.,
Defendants.

MEMORANDUM ORDER ON DEFENDANTS' POST-TRIAL MOTIONS
(Filed May 25, 1982)

The defendants advance several grounds in their post-trial motions demanding a new trial or judgment notwithstanding the verdict. They claim error on the part of the court in granting summary judgment in behalf of the plaintiffs on the issue of the impartial decision maker and the issue of the inadequate statements supporting the decisions

of the institutional adjustment committee. Those points are addressed in the court's order granting summary judgment.

The post-trial motions raise two basic points which the court feels should be addressed here. First, the limitation placed on the defendants in introducing evidence in support of the defense of justification and second, the necessity on the part of the plaintiffs to exhaust existing administrative remedies before applying to the court for relief under 42 U. S. C. § 1983.

On the first point the defendants assert that the court should have permitted the defendants to go outside the record of the proceedings before the prison adjustment committee and offer evidence as to the conduct and character of the plaintiffs in support of the defense of justification. To support that position the defendants rely on *Carey v. Piphus*, 435 U. S. 247 (1977). The reliance is misplaced. *Carey v. Piphus* holds that in defense of a denial of due process a defendant may prove justification of his actions and thereby limit the plaintiff to nominal damages of One Dollar. *Piphus*, however, does not address the question of how a defendant would go about proving justification.

Hayes v. Thompson, 637 F. 2d 483 (7th Cir. 1980) addresses precisely the question of how a defendant would go about proving justification. In *Hayes v. Thompson* the court rejected attempts by administrative officials to go outside the administrative record in an attempt to justify the administrator's denial of witnesses and statement of reasons for disciplinary action in prison administration hearings. The court said:

> Such post-hoc rationalizations are to be viewed with suspicion, and are not a proper basis for meaningful judicial review. Support in the administrative record is necessary to protect the prisoner from arbitrary official action, and is a minimum requirement of due process. Moreover, an adequate record is essential from the inmate's perspective as well. If judicial review is to be knowledgeably sought by a prisoner, he must be able to discern when error has been committed and review might be successfully pursued. The administrative record provides the prisoner's source of knowing the basis for a disciplinary decision and allows him to contest erroneous or insufficient support. If subsequent testimony were permitted to constitute the necessary support for disciplinary action, it would produce the anomalous result of requiring a prisoner to initiate and bring to trial a civil rights action in order to discover what underlay the decision.

In light of the holding in *Hayes v. Thompson* it is clear that the defendants should not have been permitted to offer evidence that was not before the institutional adjustment committee in justification of the acts of that committee.

The second point in the defendants' post-trial motion is that this court, following the rationale of *Secret v. Brierton*, 584 F. 2d 823 (7th Cir. 1978), should require the plaintiffs to exhaust administrative remedies to rectify errors in procedures before the institutional adjustment committee in advance of bringing suit in this court. The defendants argue *Parratt v. Taylor*, 451 U. S. 527 (1981) in support of that position. *Parratt v. Taylor* holds that an action for damages for loss of personal property resulting from the conduct of a state employee will not lie where the state has afforded an adequate remedy to recover for the loss under state law. *Parratt v. Taylor* does not overrule

Monroe v. Pape, 365 U. S. 167 (1961) and the second contention of the defendants in their post-trial motions is without merit.

IT IS THEREFORE ORDERED that the post-trial motions of the defendants for a new trial or in the alternative for judgment notwithstanding the verdict are hereby denied.

ENTER this 25th day of May, 1982.

/s/ Harold A. Baker
United States District Judge

FILED
JAN 10 1984
ALEXANDER L. STEVAS
CLERK

No. 83-980

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

JAMES REDDING, et al.,

Petitioners,

v.

JAMES FAIRMAN, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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In The

Supreme Court of the United States

October Term, 1983

JAMES REDDING, et al.,

Petitioners,

v.

JAMES FAIRMAN, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION

ARGUMENT

I.

THE COURT OF APPEALS CORRECTLY DECIDED THAT INMATES SEEKING MONEY DAMAGES FOR DUE PROCESS VIOLATIONS AT PRISON DISCIPLINARY HEARINGS HAD TO PROVE ACTUAL INJURY RESULTING FROM THE ALLEGED VIOLATIONS, AND THAT EVIDENCE TENDING TO SHOW THEIR GUILT FOR THE RULE INFRACTION SHOULD HAVE BEEN ADMITTED.

Seven inmates at the Pontiac Correctional Center, a maximum-security prison operated by the Illinois Department of Corrections, filed separate actions under 42

U.S.C. 1983. Their cases were consolidated by the district court for trial. All the cases alleged that the Adjustment Committee hearings at which they were found guilty of violating institutional rules were defective under *Wolff v. McDonnell*, 418 U.S. 539 (1974), and the Seventh Circuit decisions of *Hayes v. Walker*, 555 F.2d 625, cert. den. 434 U.S. 959 (1977), *Hayes v. Thompson*, 637 F.2d 483 (1980), and *Chavis v. Rowe*, 643 F.2d 1281, cert. den. 454 U.S. 907 (1981).

On a motion for summary judgment, the district court decided that each of the eighteen separate hearings at issue was constitutionally inadequate. The Court of Appeals affirmed this decision with respect to sixteen of the eighteen hearings. *Redding v. Fairman*, 717 F.2d at 1114-16. The Court of Appeals held that the written Adjustment Committee summaries failed to state adequately the evidence relied on and the reasons for the disciplinary action, requirements mandated by *Wolff v. McDonnell*. The Court of Appeals also ruled that in two of the hearings the record did not adequately document why the inmates were denied witnesses.

After the district court's ruling on the motion for summary judgment, the case proceeded to a jury trial on the question of damages. Each inmate testified that because of the Adjustment Committee's guilty finding, he suffered damages by being placed in the segregation unit and losing good time credits. The defendants sought to defend the damage claims by introducing evidence that, even if the hearings were procedurally defective, the inmates were nevertheless guilty of the rule violations, and that under *Carey v. Piphus*, 435 U.S. 247 (1978), only nominal damages should be awarded.

The issue which the petitioners seek to have reviewed here arose in the context of two inmates' hearings. In

the first, Inmate Melvin Nalls had received one year in segregation status and lost one year of good time credits for stabbing another inmate. At trial, the defendants attempted to introduce the testimony of a prison employee, Joseph Dillman, who observed Nalls and the victim in the shower area of the prison gymnasium where the stabbing occurred. Dillman observed the victim with blood on his pants and heard him say to Nalls, "I won't forget this."

In the other case, Inmate Jamal Ali Akbar had been found guilty of possessing contraband documents. While performing duties as a prison law clerk, Akbar had been subjected to a routine search by Officer M. L. Dunning. Dunning found among Akbar's legal papers a note or "kite" from one inmate to another inmate which Akbar was not authorized to have.

The district court would not permit Dillman or Dunning to testify before the jury, and would not admit the "kite" into evidence. The district court based its ruling on its interpretation of *Hayes v. Thompson*, 637 F.2d 483 (7th Cir. 1980), which held that the sufficiency of Adjustment Committee hearings must be judged solely within the confines of the administrative record. That is, when judging whether or not the requirements of *Wolff* have been met, *Hayes v. Thompson* holds that subsequent trial testimony cannot supplement what the Committee should properly have recorded originally.

The defendants contended at trial—and the Court of Appeals subsequently agreed—that the district court was misapplying *Hayes v. Thompson* in a way which put it in conflict with *Carey v. Piphus*.

In *Carey*, the plaintiffs were public school students who had been suspended for violating school rules. As in the present case, the district court ruled that the students

had been suspended without procedural due process. This Court held that if the students had been properly suspended (that is, if they were guilty of committing the rule violations), then they should not be compensated for damages resulting from the suspensions:

> "In this case, the Court of Appeals held that if [the school officials] can prove on remand that '[the students] would have been suspended even if a proper hearing had been held' (citation omitted), then respondents will not be entitled to recover damages to compensate them for injuries caused by the suspensions. The court thought that in such a case, the failure to accord procedural due process could not properly be viewed as a cause of the suspensions. (Citations omitted). The court suggested that in such circumstances, an award of damages for injuries caused by the suspensions would constitute a windfall, rather than compensation, to respondents. (Citations omitted). We do not understand the parties to disagree with this conclusion. Nor do we." *Carey v. Piphus* at 260.

It was this language which the defendants relied on in offering the testimony of Dillman and Dunning. The district court disagreed, and ruled that because these witnesses did not personally testify before the Adjustment Committee, they could not testify in court. The district court read *Hayes v. Thompson* as limiting all evidence at trial to the "administrative record." The jury ultimately awarded Nalls $1,000 and Akbar $3,700 in damages.

The decision of the Seventh Circuit reversing these awards was clearly correct and consistent with *Carey v. Piphus*. Beyond question, it would be a windfall for prison inmates to be rewarded for possession of contraband or assaultive behavior. Reliance on *Hayes v. Thompson* was misplaced because that case dealt with the question of

liability, while *Carey v. Piphus* deals with damages. Inmates cannot expect to seek substantial money damages in a lawsuit and then exclude relevant, competent evidence tending to show that they deserved punishment, and would have received the same punishment, even if a procedurally correct hearing had been held.

II.

THE COURT OF APPEALS CORRECTLY DECIDED THAT DUE PROCESS DOES NOT AUTOMATICALLY REQUIRE ADJUSTMENT COMMITTEE MEMBERS SUED FOR DAMAGES BY AN INMATE TO DISQUALIFY THEMSELVES WHEN THAT INMATE APPEARS BEFORE THE ADJUSTMENT COMMITTEE.

The decisions of this Court clearly establish that due process embodies the notion that decision-makers should be impartial. *Tumey v. Ohio*, 273 U.S. 510 (1927); *Ward v. Village of Monroeville*, 409 U.S. 57 (1972). The decision-maker being questioned is presumed to be unbiased, and the burden of establishing a disqualifying interest rests on the party alleging bias. *Schweiker v. McClure*, 456 U.S. 188, 195 (1982). In the present case, the district court announced a *per se* rule of disqualification for prison disciplinary hearings. The district court ruled that an Adjustment Committee member previously sued for money damages by a prisoner must disqualify himself when that prisoner appears before the Adjustment Committee; in effect, the district court created an irrebuttable presumption of bias.

The Court of Appeals rejected this *per se* approach for a number of valid reasons. The large number of inmate lawsuits pending at any given time would impose significant administrative burdens on the staff assignment process, and the three staff members assigned to Adjust-

ment Committee duties could be hampered by constantly having to disqualify themselves. This could be a particular problem for the Adjustment Committee chairman, who is typically a senior correctional officer. The chairman may hold that position for a several month period, and he could be almost entirely disabled from carrying out his duties if he had to work under a *per se* rule of disqualification.

Additionally, a *per se* rule would give inmates too much leverage over the disciplinary process. A prisoner could disqualify everyone in the institution from participating on the Adjustment Committee simply by suing them. There were eighteen defendants originally named in this case, and sixteen were involved with the numerous disciplinary hearings of just one inmate, Paul Tedder. All sixteen of those defendants would have been disqualified under a *per se* rule from participating on the Adjustment Committee.

The Seventh Circuit quite properly recognized the problems associated with this rigid procedure and instead opted for a case-by-case determination when questions of bias are raised because of pending lawsuits. The Court of Appeals ordered the district court on remand to consider, among other factors, the extent of the defendants' "personal involvement" in the pending lawsuits to determine whether due process requires disqualification. Any uncertainties inherent in this disposition can be resolved on remand.

CONCLUSION

For the foregoing reasons, the respondents pray that the petition for a writ of certiorari be denied.

Respectfully submitted,

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